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3. The important elements of typical Federal Register documents.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, June 14, 2011
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 76, No. 107

Friday, June 3, 2011

Reader Aids
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

8683.....32065

5 CFR

Proposed Rules:

Ch. VII.....32088

7 CFR

457.....32067

Proposed Rules:

1205.....32088

14 CFR

Proposed Rules:

39.....32103
139.....32105
382.....32107

31 CFR

10.....32286

33 CFR

165 (2 documents) 32069, 32071

34 CFR

Ch. II.....32073

40 CFR

300.....32081

Proposed Rules:

52 (2 documents) 32110, 32113
300.....32115

41 CFR

Proposed Rules:

Ch. 101.....32088
Ch. 102.....32088
Ch. 105.....32088

42 CFR

412.....32085

47 CFR

Proposed Rules:

73.....32116
76.....32116

48 CFR

Proposed Rules:

Ch. 1.....32133
Ch. 5.....32088
Ch. 61.....32088

50 CFR

635.....32086

Federal Register
Vol. 76, No. 107
Friday, June 3, 2011

Presidential Documents

Title 3—

The President

Proclamation 8683 of May 27, 2011

Prayer for Peace, Memorial Day, 2011

By the President of the United States of America

A Proclamation

For over two centuries, brave men and women have laid down their lives in defense of our great Nation. These heroes have made the ultimate sacrifice so we may uphold the ideals we all cherish. On this Memorial Day, we honor the generations of Americans who have fought and died to defend our freedom.

Today, all who wear the uniform of the United States carry with them the proud legacies of those who have made our Nation great, from the patriots who fought at Lexington and Concord to the troops who stormed the beaches at Normandy. Ordinary men and women of extraordinary courage have, since our earliest days, answered the call of duty with valor and unwavering devotion. From Gettysburg to Kandahar, America's sons and daughters have served with honor and distinction, securing our liberties and laying a foundation for lasting peace.

On this solemn day in which Americans unite in remembrance of our country's fallen, we also pray for our military personnel and their families, our veterans, and all who have lost loved ones. As a grateful Nation, we forever carry the selfless sacrifice of our fallen heroes in our hearts, and we share the task of caring for those they left behind.

In his second Inaugural Address, in the midst of the Civil War, President Lincoln called on our embattled Nation "to care for him who shall have borne the battle, and for his widow, and his orphan, to do all which may achieve and cherish a just, and a lasting peace, among ourselves, and with all nations." On this Memorial Day, and every day, we bear a heavy burden of responsibility to uphold the founding principles so many died defending. I call on all Americans to come together to honor the men and women who gave their lives so that we may live free, and to strive for a just and lasting peace in our world.

In honor of our fallen service members, the Congress, by a joint resolution approved May 11, 1950, as amended (36 U.S.C. 116), has requested the President issue a proclamation calling on the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer. The Congress, by Public Law 106–579, has also designated 3:00 p.m. local time on that day as a time for all Americans to observe, in their own way, the National Moment of Remembrance.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim Memorial Day, May 30, 2011, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11:00 a.m. of that day as a time to unite in prayer. I also ask all Americans to observe the National Moment of Remembrance beginning at 3:00 p.m. local time on Memorial Day.

I request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon on this Memorial Day on all buildings, grounds, and naval vessels throughout the United States

and in all areas under its jurisdiction and control. I also request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of May, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–13922
Filed 6–2–11; 8:45 am]
Billing code 3195–W1–P

Rules and Regulations

Federal Register
Vol. 76, No. 107
Friday, June 3, 2011

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–10–0002]

RIN 0563–AC27

Common Crop Insurance Regulations; Extra Long Staple Cotton Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes amendments made to the Common Crop Insurance Regulations, Extra Long Staple Cotton Crop Insurance Provisions to remove all references to the Daily Spot Cotton Quotation and replace the references with the National Average Loan Rate published by the Farm Service Agency (FSA), to incorporate a current Special Provisions statement into the Crop Provisions, and to make the Extra Long Staple Cotton Crop Insurance Provisions consistent with the Upland Cotton Crop Insurance Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of the producers, and to reduce vulnerability to program fraud, waste, and abuse. The changes will be effective for the 2012 and succeeding crop years.

DATES: *Effective Date:* This rule is effective July 5, 2011.

FOR FURTHER INFORMATION CONTACT: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through March 31, 2012.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, 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.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to

any direct action taken by FCIC or action by FCIC to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On November 19, 2010, FCIC published a notice of proposed rulemaking in the **Federal Register** at 75 FR 70850–70852 to revise 7 CFR part 457, Common Crop Insurance Regulations, by revising § 457.105 (Extra Long Staple Cotton Crop Insurance Provisions). Requests have been made for changes to improve the coverage offered, address program integrity issues, and simplify program administration. The provisions will be effective for the 2012 and succeeding crop years.

A total of six comments were received from one commenter. The commenter was an insurance service organization. The comments received and FCIC's responses are as follows:

General Comments

Comment: A commenter suggests FCIC remove the Basic Provisions section titles which are set off by parenthesis throughout the Crop Provisions, as has been done when other Crop Provisions that have been revised recently. For example, section 2 could read "In addition to the requirements of section 3 of the Basic Provisions * * *" [deleting the parenthetical "* * * (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) * * *" following "section 3"]. Affected sections are 2, 3, 4, 5, 6, 7(b), 8, and 9(a).

Response: Although this section was not included in the proposed rule, FCIC agrees and has revised the provisions accordingly since it is a technical correction and does not change the meaning or intent of the provision.

Comment: A commenter recommends changing "The total production (pounds) to count * * *" in section 10(c) to "The total production to count (in pounds) * * *" so as to keep the phrase "production to count" intact.

Response: Although this section was not included in the proposed rule, FCIC agrees and has revised the provisions accordingly since it is a technical correction and does not change the meaning or intent of the provision.

Section 10—Settlement of Claim

Comment: A commenter supports the proposed changes of the prices used in section 10(d) and (f) and the change of the Price B percentage used from 75 percent to 85 percent since equivalent changes have already been made in the 2011 Cotton Crop Provisions.

Response: FCIC thanks the commenter for their support regarding the changes of the prices used in section 10 and the change of the Price B percentage.

Comment: A commenter points out the Background section of the Proposed Rule states the following: "FCIC also proposes to change the percentage of Price B from 75 percent to 85 percent in sections 10(d) and 10(d)(3). This does not change the existing terms of the policy because the change was already implemented in the Special Provisions. FCIC is proposing to move the provision to the Crop Provisions because the change is being implemented in all areas where ELS cotton is available."

- If the summary of this Proposed Rule accurately describes the actions taken, and represents clarification or standardization to conform to the 2011 Basic Provisions, the only comment would concern whether FCIC has conducted whatever necessary rate impact evaluations and made any necessary adjustments. Whether or not the rate analysis has been done is a little unclear based on two phrases in the third paragraph of item 2 in the Background section of the Proposed Rule.
- The second sentence of the paragraph in the Background section suggests the change to 85 percent "was" already implemented (in the past), while the third sentence indicates the change "is being" implemented (currently) everywhere ELS Cotton is insurable. The difference between "was" and "is being" might be explained in the context that the change to 85 percent "was" already added in a previous year's Special Provisions, and now "is being" added in the Crop Provisions instead (with a Special Provisions statement no longer being necessary), but it could be clarified. Was the 85 percent change previously in the Special Provisions for ALL counties where ELS Cotton was insurable, or only in some?

Response: The change from 75 percent to 85 percent was put into place in crop year 2000 with a Special Provisions statement. At the time the change was implemented, a rate adjustment was made. There has been nothing in the performance of the policy to suggest that this rate change was not appropriate or was inadequate. Therefore, no additional rate analysis is necessary.

The Special Provisions statement that says the production to count will be reduced if price quotation "A" is less than 85 percent of price quotation "B" will be removed from the Special Provisions and incorporated into the Crop Provisions. The change was made years ago and this Special Provisions statement existed in all counties where ELS Cotton is insurable. As incorporated into the Crop Provisions, no new Special Provisions statements will be required if ELS cotton is expanded to additional counties.

Section 12—Prevented Planting

Comment: A commenter recommends eliminating the option to increase prevented planting coverage levels.

Response: This section was not included in the proposed rule and would be considered a substantive change to the policy. Since the public was not provided an opportunity to comment, FCIC cannot consider the recommended change.

In addition to the changes described above, FCIC has revised section 10(f) by removing the phrase "Any AUP cotton" and replacing it with the phrase "Mature AUP cotton" to clarify the AUP cotton must be mature in order to calculate a conversion factor between AUP cotton and ELS cotton.

List of Subjects in 7 CFR Part 457

Crop insurance, Extra long staple cotton, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2012 and succeeding crop years for the Extra Long Staple Cotton Crop Insurance Provisions.

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(o).

■ 2. Amend § 457.105 as follows:
■ a. Amend the introductory text by removing "1998" and adding "2012" in its place;
■ b. Remove the undesignated paragraph immediately preceding section 1.
■ c. Amend section 2 by removing the phrase "(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)";

■ d. Amend section 3 by removing the phrase "(Contract Changes)";
■ e. Amend section 4 by removing the phrase "(Life of Policy, Cancellation, and Termination)";
■ f. Amend the introductory text of section 5 by removing the phrase "(Insured Crop)";
■ g. Amend the introductory text of section 6 by removing the phrase "(Insurable Acreage)";
■ h. Amend section 7(b) by removing the phrase "(Insurance Period)";
■ i. Amend the introductory text of section 8 by removing the phrase "(Causes of Loss)";
■ j. Amend section 9(a) by removing the phrase "(Duties in the Event of Damage or Loss)";
■ k. Amend the introductory text of section 10(c) by removing the phrase "The total production (pounds) to count" and replacing it with the phrase "The total production to count (in pounds)";
■ l. Revise section 10(d); and
■ m. Revise section 10(f).

The revisions read as follows:

§ 457.105 Extra long staple cotton crop insurance provisions.

* * * * *

10. Settlement of Claim.

* * * * *

(d) Mature ELS cotton production may be adjusted for quality when production has been damaged by insured causes. Such production to count will be reduced if Price A is less than 85 percent of Price B.

(1) Price B is defined as the Extra Long Staple Cotton National Average Loan Rate determined by FSA, or as specified in the Special Provisions.

(2) Price A is defined as the loan value per pound for the bale determined in accordance with the FSA Schedule of Premiums and Discounts for the applicable crop year, or as specified in the Special Provisions.

(3) If eligible for quality adjustment, the amount of production to be counted will be determined by multiplying the number of pounds of such production by the factor derived from dividing Price A by 85 percent of Price B.

* * * * *

(f) Mature AUP cotton harvested or appraised from acreage originally planted to ELS cotton in the same growing season will be reduced by the factor obtained by dividing the price per pound for AUP cotton by the price per pound for ELS cotton. The prices used for AUP and ELS cotton will be calculated using the Upland Cotton National Average Loan Rate determined by FSA and the Extra Long Staple Cotton National Average Loan Rate determined by FSA, or as specified in the Special Provisions.

* * * * *

Signed in Washington, DC, on May 23, 2011.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2011–13354 Filed 6–2–11; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0215]

RIN 1625–AA00

Safety Zone; Lorain Independence Day Fireworks, Black River, Lorain, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone at the mouth of the Black River, Lorain, OH for the Lorain Independence Day Fireworks. This zone is intended to restrict vessels from the Black River in Lorain, OH, during the Lorain Independence Day Fireworks on July 3, 2011. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a firework display.

DATES: This rule is effective from 9:30 p.m. until 11 p.m. on July 3, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2011–2015 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–2015 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail MST3 Rory Boyle, Marine Events Coordinator, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, e-mail *Rory.C.Boyle@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because waiting for a notice and comment period to run would be impracticable and contrary to the public interest in that it would inhibit the Coast Guard's ability to protect the public from the hazards associated with fireworks displays on navigable waters.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, a 30 day notice period would be impractical and contrary to the public interest.

Background and Purpose

The Lorain Independence Day Fireworks is an event established to celebrate United States Independence. The fireworks display will occur on July 3, 2011 from 9:30 p.m. until 11 p.m. The Captain of the Port Buffalo has determined that fireworks launched proximate to watercraft pose a significant risk to public safety and property. Thus, this temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with the aforesaid fireworks display. Establishing a safety zone to control vessel movement around the location of the launch area will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

This temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching the fireworks during the Lorain Independence Day Fireworks. It will encompass a 1,400 ft radius at the end of the break wall at the Spitzer Lakeside Marina in Lorain, OH. This temporary safety zone will be effective and enforced from 9:30 p.m. until 11 p.m. on July 3, 2011.

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

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Spitzer Lakeside Marina in Lorain, OH on July 03, 2011 from 9:30 p.m. until 11 p.m.

This safety zone will not have a significant economic impact on a substantial number of small entities because of the minimal amount of time in which the safety zone will be enforced. This safety zone will only be enforced for 90 minutes in a low vessel traffic area. Vessel traffic can pass safely around the zone. Before the effective period, we will issue maritime advisories, which include a Broadcast Notice to Mariners.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0215 to read as follows:

§ 165.T09–0215 Safety zone; Lorain Independence Day Fireworks, Black River, Lorain, OH.

(a) *Location.* The following area is a temporary safety zone: 1,400 ft radius at the end of the break wall at the Spitzer Lakeside Marina in Lorain, OH from position +41°28′ 35.68″ N. −82°10′ 51.59″ W.

(b) *Effective and enforcement period.* This zone will be effective and enforced from 9:30 p.m. until 11:00 p.m. on July 3, 2011.

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

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

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo or his on-scene representative.

Dated: May 11, 2011.

R.S. Burchell,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2011–13756 Filed 6–2–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0214]

RIN 1625–AA00

Safety Zone; Conneaut Festival Fireworks, Conneaut Harbor, Conneaut, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Conneaut Harbor, Conneaut, OH for the Conneaut Festival Fireworks. This zone is intended to restrict vessels from a portion of Conneaut Harbor, Conneaut, OH during the Conneaut Festival Fireworks on July 3, 2011. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a firework display.

DATES: This rule is effective from 9:30 p.m. until 10:45 p.m. on July 3, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2011–0214 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0214 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail MST3 Rory Boyle, Marine Events Coordinator, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, e-mail *Rory.C.Boyle@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because waiting for a notice and comment period to run would be impracticable and contrary to the public interest in that it would inhibit the Coast Guard's ability to protect the public from the hazards associated with the below discussed fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, a 30-day notice period would be impractical and contrary to the public interest.

Background and Purpose

The Conneaut Festival is an event established to celebrate United States independence and includes a fireworks display, which will be launched from a water location. The fireworks display will occur on July 3, 2011 from 9:30 p.m. until 10:45 p.m. The Captain of the Port Buffalo has determined that fireworks launched proximate to watercraft pose a significant risk to public safety and property. Thus, this temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with the aforesaid fireworks display. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at this event.

Discussion of Rule

This temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of the fireworks display occurring during the Conneaut Festival. It will encompass an 840 ft radius in part of the waters of Conneaut Harbor from position +41°58′2.22″ N, −80°33′39.89″ W. This temporary safety zone will be effective and enforced from 9:30 p.m. until 10:45 p.m. on July 3, 2011.

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

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Conneaut Harbor, Conneaut, OH on July 03, 2011 from 9:30 p.m. until 10:45 p.m.

This safety zone will not have a significant economic impact on a substantial number of small entities because of the minimal amount of time in which the safety zone will be enforced. This safety zone will only be enforced for 75 minutes in a low vessel traffic area. Vessel traffic can pass safely around the zone. Before the effective period, we will issue maritime advisories, which include a Broadcast Notice to Mariners.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0214 as follows:

§ 165.T09–0214 Safety zone; Conneaut Festival Fireworks, Conneaut Harbor, Conneaut, OH.

(a) *Location.* The following area is a temporary safety zone: An 840 ft radius in part of the waters of Conneaut Harbor from position +41°58′2.22″ N, −80°33′39.89″ W.

(b) *Effective and enforcement period.* This zone will be effective and enforced from 9:30 p.m. until 10:45 p.m. on July 3, 2011.

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

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

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo or his on-scene representative.

Dated: May 11, 2011.

R.S. Burchell,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2011–13758 Filed 6–2–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2011–OII–0001]

Investing in Innovation Fund

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Final revisions to priorities, requirements, and selection criteria.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement amends the final priorities, requirements, and selection criteria under the Investing in Innovation Fund (i3) program as established in the notice of final priorities, requirements, definitions, and selection criteria (2010 i3 NFP) that was published in the **Federal Register** on March 12, 2010. The 2010 i3 NFP established specific priorities, requirements, definitions, and selection criteria to be used in evaluating grant applications for the i3 program. This document provides the Secretary with additional flexibility in using the priorities and selection criteria for i3 competitions in fiscal year (FY) 2011 and subsequent years. In addition, the document modifies the requirements on the "Limits on Grant Awards" and "Cost Sharing or Matching." The revisions we establish in this document respond to specific lessons learned from the first competition of the i3 program in FY 2010 and allow the Department to simplify and improve the design of the i3 program to better achieve its purposes and goals.

DATES: *Effective Date:* These revisions to priorities, requirements, and selection criteria are effective July 5, 2011.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W302, Washington, DC 20202. Telephone: (202) 453–7122; or by e-mail: *i3@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:

Purpose of Program: The Investing in Innovation Fund, established under section 14007 of the American Recovery and Reinvestment Act of 2009 (ARRA),

provides funding to (1) local educational agencies (LEAs), and (2) nonprofit organizations in partnership with (a) one or more LEAs or (b) a consortium of schools. The purpose of the i3 program is to provide competitive grants to applicants with a record of improving student achievement and attainment in order to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

Grants awarded under the i3 program (1) Allow eligible entities to expand and develop innovative practices that can serve as models of best practices, (2) allow eligible entities to carry out that work in partnership with the private sector and the philanthropic community, and (3) support eligible entities in identifying and documenting best practices that can be shared and taken to scale based on demonstrated success.

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Section 14007, Public Law 111–5.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 12, 2010 (75 FR 12004–12071).

Background: The Department published a proposed notice of revisions to priorities, requirements, and selection criteria (2011 Notice of Proposed i3 Revisions) in the **Federal Register** on January 10, 2011 (76 FR 1412–1415). That notice contained background information and our reasons for the proposed revisions.

There is one difference between the proposed revisions to priorities, requirements, and selection criteria and these final revisions to priorities, requirements, and selection criteria.

Public Comment: In response to our invitation in the 2011 Notice of Proposed i3 Revisions, 18 parties, including nonprofit organizations, professional associations, and private citizens, submitted comments.

We address general comments and then discuss other substantive issues under the title of the item to which they pertain. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments received on, and any changes to, the revisions to the priorities, requirements, and selection criteria since publication of the 2011 Notice of Proposed i3 Revisions follows.

General Comments

Comment: While one commenter endorsed all of the proposed revisions, a few commenters expressed dissatisfaction with the overall structure and operation of the i3 program, stating that the proposed revisions were insufficient and would not improve the program.

Discussion: The Department appreciates the feedback on how the i3 program could be improved. However, the proposed revisions to the priorities, requirements, and selection criteria were not intended to substantially change the program but, instead, were intended to give the Secretary flexibility in a few discrete areas (selecting priorities and selection criteria and adjusting the private-sector matching percentages on a competition-by-competition basis) and to modify our requirement on grant award limits. We believe that by establishing the flexibility to select the most appropriate priorities, requirements, and selection criteria for each type of grant (Scale-up, Validation, or Development) under this program in any year in which the Department makes new i3 awards, the Secretary will be able to use the i3 program to meet the evolving needs of the American education system. A substantial revision of the structure and operation of the i3 program could be proposed by the Department in the future. If the Department decides to propose such a revision, the concerns raised and suggestions made in comments regarding the overall structure of the i3 program would be considered.

Changes: None.

Priorities

Comment: A few commenters stated that the Department should use all four absolute priorities in all future i3 competitions. One commenter stated that the integrity of the i3 program relies on whole-scale reform that can be achieved only by applying all four absolute priorities in all future competitions. One commenter noted that the priorities established under the 2010 i3 NFP are generally broad and would be relevant in most years of the foreseeable future, which would make it unnecessary to exclude a priority in a given year.

Discussion: The Department agrees that all four absolute priorities are important to whole-scale education reform. However, the Department also recognizes that one or more of the four absolute priorities may be relatively more important in a given year. With the flexibility to select the absolute priorities for a given i3 competition, the Secretary can consider and select priorities that best support the needs of the American education system in a given year.

Additionally, although applicants selected for funding in the FY 2010 competition officially applied under one absolute priority, they tended to address several of the absolute priorities in responding to the selection criteria. Therefore, even if all four absolute priorities established in the 2010 i3 NFP are not used in a given year's competition, it is still likely that we would receive applications addressing the four reform areas.

Changes: None.

Comment: One commenter stated that the applications funded in the FY 2010 i3 competition under *Absolute Priority 1: Innovations that Support Effective Teachers and Principals* focused predominantly on teachers instead of principals, resulting in minimal funding of efforts to improve school leadership. The commenter recommended that the Department separate Absolute Priority 1 into two separate priorities—one focused on teachers and one focused on principals.

Discussion: Absolute Priority 1 focuses on practices, strategies, or programs that increase the number or percentages of highly effective teachers or principals (or reduce the number or percentages of ineffective teachers or principals), especially for high-need students. Under this priority, applicants already may determine whether their proposed project will focus on teachers or principals.

The 2011 Notice of Proposed i3 Revisions did not propose any changes to the text of the absolute priorities established in the 2010 i3 NFP. For this reason, we do not believe it is appropriate to make changes to the text of the priorities through this notice. However, when designing future i3 competitions, the Department may consider revising Absolute Priority 1 or developing a priority focused exclusively on school leadership. If in a future competition the Department decides to propose such a new priority or revise an existing priority, rather than select from the established priorities, the Department would comply with any applicable rulemaking requirements.

Changes: None.

Comment: A number of commenters recommended additional priorities for the Department to use in future i3 competitions, including priorities on promoting diversity, expanding learning time, supporting school start-up models, and using technology to improve instruction.

Discussion: While the Department recognizes the importance of the issues and topics mentioned by the commenters, this notice is not intended to specify the absolute or competitive preference priorities that will be used in a given year's i3 competition. Rather, the purpose of this notice is to provide the Secretary with the flexibility to use any of the absolute or competitive preference priorities announced in the 2010 i3 NFP in any future i3 competition. When designing future i3 competitions, the Department may consider using other priorities, including the priorities recommended by the commenters as well as the Secretary's Supplemental Priorities, published in the **Federal Register** on December 15, 2011 (75 FR 78486–78511). If in a future competition the Department decides to propose a new priority or revise an established i3 priority, rather than select from existing priorities, the Department would comply with any applicable rulemaking requirements.

Changes: None.

Comment: A few commenters expressed support for giving the Secretary the flexibility to use one or more of the established competitive preference priorities in a given year's competition. One commenter requested that the Department use this flexibility to remove *Competitive Preference Priority 8: Innovations that Serve Schools in Rural LEAs* because, according to the commenter, it disadvantages all other applicants.

Discussion: We appreciate the commenters' support for providing the Secretary with the flexibility to use one or more of the established priorities in a given year's competition.

With regard to the commenter's recommendation that the Department use the flexibility afforded under this notice to remove *Competitive Preference Priority 8: Innovations that Serve Schools in Rural LEAs,* we note that the flexibility provided enables the Secretary to select priorities on a competition-by-competition basis—that is, through the notice inviting applications, not this notice. In any given year, Competitive Preference Priority 8 may be appropriate because it acknowledges that solutions to educational challenges may be different in rural areas than in urban and suburban communities and that there is a need for solutions to unique rural challenges. The Department aims to ensure that projects serving high-needs students in diverse contexts can compete for i3 funding.

Changes: None.

Comment: A few commenters opposed giving the Secretary the flexibility to use one or more of the established competitive preference priorities in a given year's competition. One commenter recommended that the Department use all of the competitive preference priorities established in the 2010 i3 NFP in all future competitions. Another commenter opposed the proposed revision because it would allow any future Secretary to determine that early learning is not a priority in a given year.

Discussion: In the FY 2010 i3 competition, the Department identified four competitive preference priorities aligned with the Department's reform goals. Although we recognize the importance of these priorities, we appreciate that the needs of the American education system may change. We believe it is important that the Secretary have the flexibility to consider multiple factors in determining whether to award competitive preference points in a given competition. This notice allows for that consideration by providing the Secretary with flexibility to use one or more of the competitive preference priorities established in the 2010 i3 NFP.

Changes: None.

Comment: Two commenters expressed support for providing the Secretary with the flexibility to use one or more of the established priorities in a given year's competition, but recommended that the Department provide the public with the opportunity to comment on the selected priorities for each year's competition.

Discussion: Under the General Education Provisions Acts (GEPA) and the Administrative Procedures Act (APA), the Department, in most cases, is required to seek public comment on proposed rules, including proposed priorities, requirements, definitions, and selection criteria for a grant competition, and then publish a final rule along with responses to the comments received on the proposed rule. The Department already sought, received, and responded to public comment on the absolute and competitive preference priorities established in the 2010 i3 NFP. As we stated in that notice, in any year in which we choose to use these priorities, we will announce them in a notice inviting applications published in the **Federal Register**. Following this process (rather than seeking additional public comment on priorities that have already gone through rulemaking) allows the Department to award grants on a more efficient and timely basis. However, if in a future competition the Department decides to propose a new priority or revise an established i3 priority, rather than select from existing priorities, the Department would comply with any applicable rulemaking requirements.

Changes: None.

Requirement on Limits on Grant Awards

Comment: Many commenters supported the proposed change that clarified that the limit of two grant awards applies to a single year's competition. However, two commenters recommended that the Department apply the requirement differently depending on the type of grant award (Scale-up, Validation, or Development). One commenter stated that the limit of two grant awards in a single year's competition should apply only to Validation and Development grants and that a Scale-up grantee should not be permitted to reapply or receive funding for the same or a similar project in the year immediately following the year it was awarded a grant. In addition, one commenter recommended that no grantee be allowed to receive more than two Scale-up or Validation grants in a single year's competition.

Discussion: In the 2010 i3 NFP, the Department established the requirement on the "Limits on Grant Awards" to ensure that i3 funds are used to support the widest possible array of innovative projects. Generally, we agree with commenters that the limitations on grant awards for Scale-up and Validation grantees should be more stringent than the limitation on grant awards for Development grants because of the size of the awards and the complexity of these grants. As a result, we have modified the proposed requirement on the "Limit on Grant Awards" to further limit the number of Scale-up and Validation grants a grantee may receive to only one grant in two consecutive years. Thus, if a grantee receives a Scale-up or Validation grant in one year, that grantee would not be eligible to receive a Scale-up or Validation grant the next year.

We have also modified the requirement on "Limits on Grant Awards" to clarify that the limit applies to new grant awards made in a year in which the Department funds down the slate from a prior year's competition, but not to continuation awards. The

purpose of this requirement is to limit the number of new awards received by a single grantee, whether through a competition or funding down the slate from a prior year's competition; the purpose is not to limit possible continuation awards.

Changes: We have revised the proposed "Limits on Grant Awards" requirement to clarify that the limitation applies to new awards. Specifically, the revised requirement states that (a) No grantee may receive more than two new grant awards of any type under the i3 program in a single year; (b) In any two-year period, no grantee may receive more than one new Scale-up or Validation grant; and (c) No grantee may receive more than $55 million in new grant awards under the i3 program in a single year.

Comment: One commenter opposed the proposed change to limit an applicant to two grant awards in a single year's competition. The commenter stated that limiting grant awards in only a single year's competition would allow successful applicants to pull further ahead of unsuccessful applicants and, thus, would increase the resource gap among applicants.

Discussion: As discussed elsewhere in this notice, in addition to clarifying that no grantee may receive more than two grant awards in a single year, the Department further modified the requirement on the "Limits on Grant Awards" so that no Scale-up or Validation grantee can receive more than one Scale-up or Validation grant in any two-year period. The Department appreciates the commenter's concern and believes that this additional change appropriately balances the program's purpose of supporting the implementation of and investment in innovative practices that are demonstrated to improve student academic achievement and attainment with the desire to support a wide array of innovative projects.

With regard to Development grants, we note that most of the i3 applications submitted in the FY 2010 i3 competition were applications for Development grants. Given the high volume of applications, and our expectation that the competition for Development grants will remain highly competitive, we are not establishing this same limitation on Development grantees.

Changes: As noted elsewhere in this notice, we have revised the "Limits on Grant Awards" requirement to state that no grantee may receive more than two new grant awards of any type under the i3 program in a single year; in any two-year period, no grantee may receive more than one new Scale-up or Validation grant; and no grantee may receive more than $55 million in new grant awards under the i3 program in a single year.

Requirement on Cost-Sharing or Matching

Comment: Many commenters expressed support for the proposed revisions to the "Cost Sharing and Matching" requirement, which provides the Secretary with the flexibility to determine the required amount of private-sector matching funds or in-kind contributions that an eligible applicant must obtain for an i3 grant in a given year. One commenter stated that replacing a "one-size fits all" policy with this flexibility to determine the private-sector match on a more customized basis would broaden participation in future competitions.

In addition, two commenters provided recommendations on how the Department might use the proposed flexibility to require different matching levels for the different types of i3 grant awards (Scale-up, Validation, or Development). One commenter encouraged the Department to consider limiting the percentage of private-sector matches required for Scale-up grantees because they would have already received a significant level of private funding. In contrast, another commenter recommended that the Department maintain a significant matching requirement for Scale-up and Validation grants, but that a lower matching requirement be set for Development grants.

Discussion: The "Cost Sharing or Matching" requirement contained in the 2011 Notice of Proposed i3 Revisions states that to be eligible for an award, an eligible applicant must obtain private-sector matching funds or in-kind contributions equal to an amount that the Secretary will specify in the notice inviting applications for a particular i3 competition. We appreciate the commenters' support for this revision to the "Cost Sharing or Matching" requirement.

With respect to the comments requesting that we further modify this requirement to provide for different matching levels for the different types of grants, we do not believe that establishing fixed matching levels in this notice is appropriate. Furthermore, such a modification is not necessary because the proposed revision allows the Department to establish different matching levels for different types of grants when designing future i3 competitions.

Changes: None.

Comment: Two commenters expressed general support for the proposed changes to the "Cost Sharing or Matching" requirement in the 2011 Proposed i3 Revisions, but recommended that the Department also establish a ceiling on the private-sector match that could be required under any i3 competition.

Discussion: As noted in the 2010 i3 NFP, the Department considers the private-sector match to be a strong indicator of the potential for the scalability and sustainability of a proposed project over time. We decline to set a ceiling on the private-sector match because doing so would limit the Department's flexibility to leverage public- and private-sector investments in education. The flexibility offered by the revision will allow the Department to consider multiple factors when determining the required private-sector match, including the economic climate or the amount of time available for the highest-rated applicants to secure their private-sector matches.

Changes: None.

Comment: Two commenters suggested that the Department allow local educational agency (LEA) funds or other public funds to be used to meet the matching requirement. One commenter stated that this change would encourage LEAs to demonstrate their commitment to i3 projects, which would enhance the sustainability of those projects. Another commenter stated that it may be difficult for potential applicants to secure sizeable private-sector contributions and that undue reliance on the private sector could result in LEAs becoming overly beholden to private funders.

Discussion: Section 14007(b)(3) of the ARRA specifically requires a private-sector match for this program. Thus, an eligible applicant may not use funding from other Federal programs or other public sources (including an LEA's own funds) to satisfy the statutory "Cost Sharing or Matching" requirement. However, nothing prohibits an eligible applicant from securing public funds in addition to the required private-sector matching funds or in-kind contributions. In addition, eligible applicants can establish the terms and conditions of their private-sector partnerships and diversify the sources from which they seek support for i3 projects in order to avoid becoming unduly dependent on or beholden to any particular source or type of funding.

The Department understands the commenter's concern about the challenges of securing significant private-sector investments. This concern, however, is addressed by the

flexibility provided in the "Cost Sharing or Matching" requirement, which allows the Secretary to determine the required amount of private-sector matching funds or in-kind contributions that eligible applicants must obtain under an i3 competition in a given year. We expect this determination to be based on an assessment of the capacity and resources available in that particular year. Moreover, an eligible applicant continues to have the option, under this requirement, to request in its application that the Secretary decrease the private-sector match amount it must provide.

Changes: None.

Comment: One commenter opposed the proposed revisions to the "Cost Sharing or Matching" requirement. Specifically, the commenter opposed providing the Secretary with the flexibility to determine the required amount of private-sector matching funds or in-kind contributions that an eligible applicant must obtain for an i3 competition in a given year. The commenter stated that requiring a private-sector partnership would be a violation of State and local laws.

Discussion: As noted elsewhere in this notice, an eligible applicant must demonstrate that it has established one or more partnerships with the private sector and that the private sector will provide matching funds. The "Cost Sharing or Matching" requirement is based on the cost-sharing and matching requirement in the authorizing legislation for the i3 program. Moreover, the commenter did not cite, and the Department is not aware of, any State or local laws that prohibit State and local governmental entities or private organizations from securing a private sector matching requirement in a Federal grant program.

Changes: None.

Selection Criteria

Comment: A few commenters supported permitting the Department, in establishing selection criteria used in grant competitions conducted under the i3 program, to choose selection criteria and factors—(i) From those established in the 2010 i3 NFP for the i3 program, (ii) from the menu of general selection criteria in the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.210, (iii) based on statutory provisions in accordance with 34 CFR 75.209, or (iv) from any combination of (i) through (iii) for competitions in FY 2011 and in subsequent years. However, one commenter encouraged the Department to maintain the selection criteria that focus on strength of research and evaluation.

Some commenters encouraged the Department to publish the specific selection criteria for a given competition as far in advance as possible. Two commenters recommended that the Department provide the public with an opportunity to comment on the selection criteria for each year's competition.

Discussion: We decline to establish specific mandatory selection criteria and factors within each criterion that must be used in all i3 competitions. As we discussed in the 2011 Notice of Proposed i3 Revisions, the purpose of the revisions concerning the use of the i3 selection criteria is to provide the Secretary with the flexibility to choose the selection criteria, and the factors included under each criterion, in order to better align the selection criteria used for the different types of grants (Scale-up, Validation, and Development) with the critical aims of that specific grant type and to better ensure that i3 projects address the most critical needs of education in a given year. With regard to the comment requesting that we maintain the selection criterion on strength of research evidence, we note that whether or not the Department uses this selection criterion, the evidence standards requirement must be met in order for an application to be eligible to receive an award. Specifically, an application for a Scale-up grant must be supported by *strong evidence* (as defined in the 2010 i3 NFP), an application for a Validation grant must be supported by *moderate evidence* (as defined in the 2010 i3 NFP), and an application for a Development grant must be supported by a reasonable hypothesis.

Regarding the recommendation that the specific selection criteria for each competition be submitted for public comment, the Department already sought, received, and responded to public comments on the selection criteria established in the 2010 i3 NFP, as well as the general selection criteria in EDGAR. However, in any year in which we choose to use these selection criteria, we will announce them in a notice inviting applications published in the **Federal Register**. Following this process (rather than seeking additional public comment on priorities that have already gone through rulemaking) allows the Department to award grants on a more efficient and timely basis. However, if in a future competition the Department decides to propose new selection criteria or revise the established selection criteria rather than select from among them, the Department would comply with all applicable rulemaking requirements.

Changes: None.

Comment: One commenter expressed concern that the proposed revision to the selection criteria would not simplify or improve the design of the program. The commenter further stated that the optional menu of EDGAR criteria suggests that the Department is unsure of the direction of the i3 program and suggested that applicants would prefer more predictability and responsiveness.

Discussion: Section 75.200 of EDGAR establishes that, to evaluate the applications for new grants, the Secretary may use: (i) The selection criteria established in § 75.209, (ii) the selection criteria in program-specific regulations, (iii) the selection criteria established under § 75.210, and (iv) any combination of criteria from (i) through (iii) of that section. We disagree that the proposed revision would not simplify or improve the design of the i3 program. We note that it is not unusual for Department programs to use the EDGAR selection criteria found in § 75.210 or developed under § 75.209 or to use different selection criteria in a given year. We believe that having greater flexibility to choose the selection criteria and the factors included in each criterion will allow the Department to simplify and better align the competition design and priorities for the three types of grants for a particular year's competition thereby resulting in projects that address the most pressing needs of the American educational system at that time.

Changes: None.

Comments Not Directly Related to Proposed Changes

We received a number of comments on issues that were unrelated to the specific proposals in the 2011 Notice of Proposed i3 Revisions. These comments focused on the overall design of the i3 program. Although the Department previously addressed these issues in the 2009 i3 notice of proposed priorities, requirements, definitions, and selection criteria or in the 2010 i3 NFP, we want to be responsive and transparent in establishing rules under the i3 program and, therefore, are addressing these comments in this notice.

Comment: Three commenters provided recommendations on who may apply for and receive an i3 grant award. One commenter encouraged the Department to continue to allow nonprofit organizations in partnership with LEAs or schools to be eligible applicants. In contrast, another commenter recommended that the Department allow only LEAs to be

eligible applicants for Development grants. Another commenter recommended that the Department allow for-profit organizations to be eligible applicants or official partners that may receive subgrants.

Discussion: Section 14007(a)(1) of the ARRA specifies the types of entities that are eligible to apply for funding under this program. Entities eligible for i3 grants are:

(a) An LEA

(b) A partnership between a nonprofit organization and—

(1) One or more LEAs; or

(2) A consortium of schools.

The Department has no authority to revise or expand these statutorily prescribed eligibility requirements.

Changes: None.

Comment: One commenter recommended that the Department redefine the role of the *official partner,* a term that is defined in the 2010 i3 NFP, so that schools without a track record of success can participate in future i3 projects.

Discussion: A low-performing LEA or school may participate in projects under this program as either an *official partner* (as defined in the 2010 i3 NFP) or *other partner* (as defined in the 2010 i3 NFP). While an LEA that applies for funds under section 14007(a)(1)(A) of the ARRA must meet the requirements in section 14007(b)(1) through (b)(3) of the ARRA, as amended by section 307 of Division D of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117), nothing in the statute or the priorities, requirements, definitions, or selection criteria for this program prohibits such an eligible LEA from proposing a project that involves the LEA partnering with other partners, including other LEAs. Such other partners may be low-performing LEAs or schools. In addition, a partnership between a non-profit organization and one or more LEAs or a consortium of schools could include one or more LEAs, either as an *official partner* (as defined in the 2010 i3 NFP) or as an *other partner* (as defined in the 2010 i3 NFP) that does not meet the eligibility requirements. This is because such a partnership is deemed to have met the eligibility requirements in section 14007(b)(1) through (b)(3) of the ARRA if the nonprofit organization in the partnership satisfies the requirements in section 14007(c) of the ARRA.

Changes: None.

Comment: One commenter stated that the term "high-need student" should be deleted from the 2010 i3 NFP because the term is defined too broadly and does not focus solely on reducing the achievement gap among the subgroups of students specified in the Elementary and Secondary Education Act of 1965, as amended (ESEA) (*e.g.,* economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and limited English proficient students).

Discussion: The 2010 i3 NFP established a requirement that all eligible applicants implement practices, strategies, or programs for high-need students. The 2010 i3 NFP also defined a high-need student as a student at risk of educational failure or otherwise in need of special assistance and support. This requirement and definition of *high-need student* were not within the scope of the 2011 Notice of Proposed i3 Revisions. However, as noted in the 2010 i3 NFP, we believe that this program's focus on funding projects that serve high-need students is consistent with the goal of this program, which is to improve student academic achievement and attainment. We believe that it is important to improve the academic achievement and attainment of any student at risk of educational failure. In addition, we note that the definition of *high-need student* included in the 2010 i3 NFP is appropriate because it also includes students who attend high-minority schools, who are far below grade level, who are over-age and under-credited, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a regular high school diploma on time, who are homeless, who are in foster care, and who have been incarcerated. These students typically have very high needs, but are not included among the subgroups of students specified in the ESEA. Consequently, we do not believe the definition of *high-need student* in the 2010 i3 NFP is too broad.

Changes: None.

Comment: One commenter recommended that the Department set aside more funding for early-stage innovation or Development grants.

Discussion: As noted in the 2010 i3 NFP, the Department has found that the structure of this program and the use of three categories of grants appropriately balance support for the development of promising yet relatively untested ideas with the growth and scaling of practices that have made demonstrable improvements in student achievement and attainment outcomes. The Department will consider multiple factors, including the quality of the applications received and the amount of funds available for new grant awards in a given year, when determining the number of awards made under each type of grant.

Changes: None.

Comment: Two commenters opposed any additional funding for the Department's innovative discretionary grant programs. These commenters argued that formula grants are a more reliable stream of funding for LEAs and are particularly beneficial for small and rural LEAs that often lack the resources to compete for discretionary funds. Both commenters expressed concern with the Department's lack of emphasis on the needs of rural schools and one commenter recommended that a specific set-aside be available to rural States or LEAs that demonstrate innovative initiatives that are expressly applicable in rural settings.

Discussion: The Department understands and shares the commenters' concerns about the unique challenges of schools in rural LEAs. In the FY 2010 i3 competition, we addressed those challenges by providing up to two competitive preference priority points for innovations that are designed to focus on the unique challenges of high-needs students in schools in rural LEAs. The other competitive preference priorities were awarded only one point. As with all of the Department's competitions, we have learned from experience, and we understand that more needs to be done under the i3 program to adequately address the needs of rural States and LEAs. In future i3 competitions, we will increase our outreach efforts to rural applicants as well as our efforts to recruit peer reviewers who are from rural areas or who have other experience working in rural schools and communities. We also hope that the flexibility this notice establishes in terms of choosing selection criteria and factors will allow the Department to simplify the application, thus minimizing the burden on schools and LEAs with limited resources.

Changes: None.

Comment: One commenter expressed concern that the selection criterion on strategy and capacity to scale is an impediment to applicants from rural America because the criterion requires applicants to serve 100,000, 250,000, and 500,000 students with their proposed i3 projects. The commenter encouraged the Department to reward scale-up strategies that are appropriate to the project instead of rewarding applicants that propose to serve an arbitrary number of students.

Discussion: The i3 program does not include requirements for scaling proposed projects to a specific number of students. Under selection criterion E(4) of the 2010 i3 NFP, the Secretary considers cost estimates both— (a) for

the total number of students to be served by the proposed project, which is determined by the eligible applicant, and (b) for the eligible applicant or others (including other partners) to reach the scaling targets for the respective grant types (100,000, 250,000, and 500,000 students for Development and Validation grants; and 100,000, 500,000, and 1,000,000 students for Scale-up grants). An eligible applicant is free to propose the number of students it will serve under its project, consistent with its project goals, capacity, and resources, and is expected to serve that number of students by the end of the grant period. The scaling targets, in contrast, are theoretical and allow peer reviewers to assess the general cost-effectiveness of proposed projects, whether implemented by the eligible applicant or by any other entity. Grantees are not required to reach these numbers during the grant period or to provide a plan to do so.

Changes: None.

Comment: One commenter recommended that the Department provide more emphasis on "social return on investment" than unit cost and scale numbers.

Discussion: The Department agrees that "social return on investment" would provide valuable information about a project's cost-effectiveness. However, the Department recognizes the challenges of calculating "social return on investment" and believes that requiring such a measure would increase the burden on applicants.

Changes: None.

Comment: One commenter encouraged the Department to allow applicants to modify existing practices, strategies, or programs as part of their plans to scale and sustain their proposed projects.

Discussion: As noted in the 2010 i3 NFP, evidence of the effectiveness of a proposed practice, strategy, or program will be stronger in terms of internal validity if the prior research applies to the same innovation the eligible applicant is proposing, rather than to a similar innovation or to a component of the proposed strategy or program. The 2010 i3 NFP does not prohibit applicants from proposing in their applications to modify an existing practice, strategy, or program as part of their plans to scale or sustain the project. However, modification and adaptation of existing, well-tested practices for new contexts may mean that strong evidence of effectiveness in the original context is only moderate evidence of effectiveness in the new context. To the extent possible, if an eligible applicant is proposing to modify or adapt an existing, well-tested practice, then it should provide a rationale for the proposed changes in its application and justify why those changes are desirable or necessary in order to improve the effectiveness of the project or to scale or sustain the project, and why the eligible applicant believes those changes would not invalidate the prior evidence of effectiveness.

Changes: None.

Comment: Some commenters submitted recommendations regarding the strong and moderate evidence requirements for the Scale-up and Validation grants. One commenter encouraged the Department to use the changes proposed in the 2011 Notice of Proposed i3 Revisions that provide for additional flexibility in using selection criteria in order to apply selection criteria that accurately reflect the state of research in the field of education.

Two commenters stated that the current evidence requirements established in the 2010 i3 NFP focus too heavily on experimental and quasi-experimental studies that are typically possible only for more mature organizations and recommended that the Department give more weight to publicly reported data. One commenter expressed concern that the current evidence requirements are overly restrictive and discourage LEAs from applying on their own because it is rare for an LEA to produce research evidence. The commenter recommended that the Department remove the moderate evidence requirement for Validation grants and instead require proposed projects to be supported by evidence of effectiveness (*e.g.,* school-based outcome data, student progress across performance levels, attainment of adequate yearly progress (AYP), gains exceeding comparable schools, subgroup progress, closing achievement gaps, graduation and dropout data, course completion, engagement indicators, teacher evaluation improvements, program evaluations). In contrast, another commenter encouraged the Department to retain the evidence definitions and requirements included in the 2010 i3 NFP and recommended that applications proposing evaluation plans that would get them to the next level of evidence receive additional points.

Discussion: The 2010 i3 NFP established standards of evidence for each type of grant under this program. Specifically, to be eligible for an award, an application for a Scale-up grant must be supported by *strong evidence* (as defined in the 2010 i3 NFP), an application for a Validation grant must be supported by *moderate evidence* (as defined in the 2010 i3 NFP), and an application for a Development grant must be supported by a reasonable hypothesis. The Department believes that, given the magnitude of public investment and the scale on which Scale-up and Validation grants will be implemented, the requirements for strong and moderate evidence are appropriate. Nothing would preclude an applicant from using publicly available data to meet the moderate and strong evidence requirements. The evidence standards requirement addresses the design of the study as opposed to the source of the data used by the study.

Regarding the comment that the Department provide additional points to applications proposing evaluation plans that would meet the next level of evidence, all applications in the FY 2010 i3 competition were judged in part on the quality of the eligible applicant's plan to evaluate its proposed project (*see* Selection Criterion D (Quality of the Project Evaluation) of the 2010 i3 NFP). The Department believes that this selection criterion adequately rewards applications with well-designed evaluation plans.

Changes: None.

Comment: One commenter recommended that the Department add "intervention" and "service" to the list of "proposed practice, strategy, or program," in every place where the list occurs in the i3 priorities and selection criteria. The commenter expressed concern that without these revisions applicants might assume that projects focused on interventions or services could not be funded under the i3 program.

Discussion: The Department understands that, in the context of the i3 program, a "practice, strategy, or program" includes an "intervention" or "service."

Changes: None.

Comment: Two commenters requested clarification regarding the Department's policies on open educational resources and intellectual property.

Discussion: The Department's regulations on project materials and copyrightable intellectual property produced with grant funds apply to grants awarded under this program. Specifically, under 34 CFR 75.621, grantees may copyright project materials produced with Department grant funds. However, under 34 CFR 74.36 and 80.34, the Department retains a non-exclusive and irrevocable license to reproduce, publish, or otherwise use those project materials for government purposes.

Changes: None.

Comment: A few commenters requested that the Department provide additional information on the i3 application process, including the requirements for securing an independent evaluator and the assumptions under which the Department may standardize application scores. One commenter thanked the Department for its efforts to provide a transparent application process and noted areas where the process might be improved, including by streamlining the application and incorporating responses to frequently asked questions into future notices inviting applications for the i3 program. One commenter recommended the Department provide additional training as well as audits to ensure consistent scoring among reviewers.

Discussion: The Department maintains an i3 Web site that addresses many of the issues highlighted by the comments. The Department's i3 Web site is available at *http://www2.ed.gov/programs/innovation/index.html.*

Changes: None.

Final Priorities

The Secretary may use any of the priorities established in the notice of final priorities, requirements, definitions, and selection criteria (2010 i3 NFP) that was published in the **Federal Register** on March 12, 2010 (75 FR 12004–12071) when establishing the priorities for a particular i3 competition. We may apply one or more of these priorities in any year in which this program is in effect.

Final Requirements

The Secretary modifies the following requirements for the i3 program:

Limits on Grant Awards: (a) No grantee may receive more than two new grant awards of any type under the i3 program in a single year; (b) In any two-year period, no grantee may receive more than one new Scale-up or Validation grant; and (c) No grantee may receive more than $55 million in new grant awards under the i3 program in a single year.

Cost Sharing or Matching: To be eligible for an award, an eligible applicant must demonstrate that it has established one or more partnerships with an entity or organization in the private sector, which may include philanthropic organizations, and that the entity or organization in the private sector will provide matching funds in order to help bring project results to scale. An eligible applicant must obtain matching funds or in-kind donations equal to an amount that the Secretary will specify in the notice inviting applications for the specific i3 competition. Selected eligible applicants must submit evidence of the full amount of private-sector matching funds following the peer review of applications. An award will not be made unless the applicant provides adequate evidence that the full amount of the private-sector match has been committed or the Secretary approves the eligible applicant's request to reduce the matching-level requirement.

The Secretary may consider decreasing the matching requirement in the most exceptional circumstances, on a case-by-case basis. An eligible applicant that anticipates being unable to meet the full amount of the private-sector matching requirement must include in its application a request to the Secretary to reduce the matching-level requirement, along with a statement of the basis for the request.

Final Selection Criteria

The Secretary may use one or more of the selection criteria established in the 2010 i3 NFP, any of the selection criteria in 34 CFR 75.210, criteria based on the statutory requirements for the i3 program in accordance with 34 CFR 75.209, or any combination of these when establishing selection criteria for each particular type of grant (Scale-up, Validation, and Development) in an i3 competition. This includes the authority to reduce the number of selection criteria. In addition, within each criterion from these sources, the Secretary may further define each criterion by selecting one or more specific factors within a criterion or assigning factors from one criterion, from any of those sources, to another criterion, in any of those sources. The Secretary may apply one or more of these criteria in any year in which this program is in effect. The Secretary may also select one or more of these selection criteria to review pre-applications, if the Secretary decides to invite pre-applications in accordance with 34 CFR 75.103. In the notice inviting applications, the application package, or both, we would announce the maximum possible points assigned to each criterion.

Note: This notice does *not* solicit applications. In any year in which we choose to use these priorities, requirements, 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 final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's discretionary grant programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the proposed priorities and definitions justify the costs.

We have determined, also, that this final regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits of this regulatory action in the 2011 Notice of Proposed i3 Revisions, published in the **Federal Register** on January 10, 2011 (76 FR1412–1415).

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 program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: 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.* At this site 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). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.411A (Scale-up grants), 84.411B (Validation grants), and 84.411C (Development grants).

Dated: May 26, 2011.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2011–13589 Filed 6–2–11; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1987–0002; FRL–9315–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Coker's Sanitation Service Landfills Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region III is publishing a direct final Deletion of the Coker's Sanitation Service Landfills Superfund Site (Site) located in Cheswold, Kent County, Delaware, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control (DNREC), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective August 2, 2011 unless EPA receives adverse comments by July 5, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1987–0002, by one of the following methods:

- *http://www.regulations.gov* . Follow on-line instructions for submitting comments.
- *E-mail:* Darius Ostrauskas, Remedial Project Manager, U.S. EPA, *ostrauskas.darius@epa.gov*
- *Fax:* (215) 814–3002, Attn: Darius Ostrauskas
- *Mail:* Darius Ostrauskas, Remedial Project Manager (3HS23), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029
- *Hand delivery:* Darius Ostrauskas, Remedial Project Manager (3HS23), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Phone 215–814–3360, Business Hours: Monday through Friday—9 a.m. to 4 p.m. Such deliveries are accepted only during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1987–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5254, Monday through Friday 8 a.m. to 5 p.m.

The Dover Public Library, Reference Department, 45 South State Street, Dover, DE 19901, (302) 736–7030, Monday through Thursday, 9 a.m. to 9 p.m., Friday and Saturday, 9 a.m. to 5 p.m., and Sunday, 1 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Darius Ostrauskas, Remedial Project Manager (3HS23), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3360.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region III is publishing this direct final Notice of Deletion of the Coker's Sanitation Service Landfills Superfund Site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective August 2, 2011 unless EPA receives adverse comments by July 5, 2011. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion and the deletion will not take effect.

EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Coker's Sanitation Service Landfills Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of Delaware prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete the Site co-published today in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the State, through DNREC, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, the Delaware State News. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Site (EPA Identification Number DED980704860) is located near Cheswold in Kent County, Delaware, approximately six miles northwest of the City of Dover. The Site consists of two landfills located approximately one-half mile apart on opposite sides of County Road 152. Landfill No. 1, which is on the north side of County Road 152, and Landfill No. 2, which is on the south side of County Road 152, are both part of larger, heavily wooded tracts of land. Both landfills are fenced off and covered with vegetation. There are no known development plans for the properties occupied by the landfills. Properties adjacent to both landfills are primarily used for agricultural or light residential development. Landfill No. 1 is bordered on the north by a forested wetland that includes a shallow meandering stream, the Willis Branch of the Leipsic River. Agricultural lands border the tree lines east and west of Landfill No. 2. Deer and other wildlife populate this area of Kent County. Groundwater near the Site is used for domestic purposes, including drinking water.

Landfill No. 1 is located on property owned by Alberta F. Schmidt. Use of Landfill No. 1 began in 1969 under a permit issued by the Delaware Water and Air Resources Commission. DNREC issued subsequent permits (1973–1976). The landfill was closed in 1977 in accordance with the Delaware Solid Waste Disposal Regulations of August 1974. During landfill operation, latex waste sludge was discharged into unlined trenches that were six to eight feet deep and twelve feet wide. Liquids were allowed to drain off as solids settled. Trenches were then backfilled with soil obtained locally.

Landfill No. 2, located on property owned by Kowinsky Farms, Inc., was operated from 1976 to 1980 under a state permit. The permit required each six-foot deep, twenty-eight foot wide, one hundred twenty-five foot long trench to have a synthetic liner. The permit also required leachate collection, installation of groundwater monitoring wells, regularly scheduled site inspections, and periodic groundwater and leachate monitoring. When the Site was closed in 1980, all trenches were capped with two feet of native soil. As waste settled and no longer generated collectable quantities of leachate, the leachate collection was phased out in the early 1980's.

EPA conducted an initial Site Investigation in 1980, and a second one in 1983. Elevated levels of acrolein were found in one well and in one leachate collection pipe on Landfill No. 2. Ethylbenzene was detected in the same well and leachate collection pipe. Bis(2-chloroethyl) ether was detected in Landfill No. 1 leachate seeps. The Site was proposed for inclusion on the NPL in the **Federal Register** on April 10, 1985 (50 FR 14115), and included on the NPL in the **Federal Register** on July 22, 1987 (52 FR 27620).

Remedial Investigation and Feasibility Study (RI/FS)

In April 1986, EPA issued letters to several Potentially Responsible Parties (PRPs) notifying them of their potential liability for Site response actions and inviting them to conduct the RI/FS. On December 30, 1987, three PRPs signed an agreement with EPA in the form of an Administrative Order on Consent to conduct the RI/FS.

Media investigation during the RI/FS included waste, leachate, groundwater, surface water and sediment, soil, and air. Among the different media types investigated, waste contained the highest number of contaminants at the highest levels for styrene, ethylbenzene, and phenolic compounds. Leachate from Landfill No. 2 (taken from leachate collection trenches within the lined cells) contained the same contaminants, but at lower levels. The waste and leachate were determined to pose a threat to human health and the environment. Groundwater at both landfills contained similar compounds but at significantly lower levels, and it was determined that they did not pose a threat to human health or the environment.

The FS provided an in-depth analysis of the following potential remedial alternatives: (1) No Action; (2) Monitoring; (3) Limited Action; (4) Soil Cap; (5) Multi-Layer Cap (both landfills) and Sub-drain (Landfill No. 1 only); (6) Volatile Organic Compound (VOC) Stripping by Aeration ; and (7) On-site Incineration (of Waste). The FS also analyzed EPA and DNREC's preferred alternative, alternative 3. The parties agreed, under a separate order, to remove drums containing varying quantities of latex waste found on-site during the RI.

Selected Remedy

EPA issued a Record of Decision (ROD) for the Site on September 28, 1990. Under the ROD, the remedial action objective was to reduce the potential for future contact with waste at the Site and thereby reduce risk to within EPA guidelines.

The waste materials found in the landfills at the Site are neither liquid nor highly mobile, and can be controlled reliably in place. The Site contains a large volume of material that would be difficult to handle and treat due to clay-like physical properties and the potential risk posed by substantial release of volatile organic compounds. EPA and DNREC determined that on-site containment of the waste was an appropriate remedial action.

The selected remedy addresses the principal threats posed by the conditions at the Site by reducing the potential for human exposure to wastes remaining at the Site. The major components of the selected remedy are as follows:

- Land use restrictions placed on both landfill properties.
- The entire waste disposal areas of both landfills are enclosed by a chain-link security fence with a locked gate to restrict the access of unauthorized persons and equipment onto the landfills. Appropriate warning signs are placed along the fence.
- Cover material was placed along the northern slope of Landfill No. 1 to eliminate exposure to leachate seeps.
- Areas of Landfill No. 2, which had subsided due to uneven settling of waste, were backfilled to grade and seeded.
- Leachate collection wells at Landfill No. 2 were sealed with grout to reduce the potential for direct contact with leachate.
- Groundwater was initially sampled semi-annually at both landfills; now, it is sampled at least once every five years.
- The landfills are inspected semi-annually.
- Surface water monitoring was conducted at the Willis Branch adjacent to

Landfill No. 1 at the same time as groundwater monitoring for a period of no less than five years. In response to monitoring requirements identified in the ROD, a groundwater and surface water monitoring program has been implemented at the Site. This monitoring program has included the identification of trigger levels for contaminants of concern for groundwater and surface water for both Landfill No.1 and Landfill No. 2. The trigger levels for Landfill No. 1 were developed primarily for the protection of aquatic wildlife due to the proximity of the Willis Branch and lack of potential human receptors. For Landfill No. 2, the trigger levels were developed to protect human health due to the proximity of nearby residential wells. Those levels are:

Contaminant of concern	Landfill No. 1 µg/L	Landfill No. 2 µg/L
Groundwater:		
Styrene	2900	100
Ethylbenzene	3200	5
1,2,3-trichloropropane	.....	5
Phenolics	.....	22999
Antimony	.....	6
Surface Water:		
Styrene	1400	.....
Ethylbenzene	1600	.....
Xylenes	900	.....

Response Actions

The following is a summary of the activities that were completed at the Site.

- An Environmental Protection Easement and Declaration of Restrictive Covenants between Alberta Schmidt, as Grantor, and DNREC, on behalf of the State of Delaware, as Grantee, relating to Landfill No. 1 was signed on February 24, 2005. The document was recorded with the Office of the Recorder of Deeds for Kent County, Delaware on April 18, 2005, to implement the institutional controls (land use restrictions) for Landfill No. 1.
- An Environmental Protection Easement and Declaration of Restrictive Covenants between Kowinsky Farms, Inc, as Grantor, and DNREC, on behalf of the State of Delaware, as Grantee, relating to Landfill No. 2 was signed on September 24, 2008. The document was recorded with the Office of the Recorder of Deeds for Kent County, Delaware on November 26, 2008, to implement the institutional controls (land use restrictions) for Landfill No. 2.
- On April 8, 1992, the PRPs entered into a Consent Decree with EPA pursuant to which the PRPs agreed to implement the remedy selected in the ROD. The PRPs started construction activities in early July 1993.
- Remedial construction activities at Landfill No.1 consisted of clearing the

perimeter of vegetation so that the security fence could be installed. Leachate seeps were covered with wood chip mulch. Following installation of the security fence, cleared areas were seeded. Lastly, warning signs were posted around the landfill perimeter.

• At Landfill No. 2, remedial construction activities were more extensive. First, the landfill was cleared of all vegetation. Trees within the landfill perimeter were cut and chipped for mulch. Each waste cell's leachate collection system was grout sealed. Settled waste cells were filled with clean fill and the entire landfill surface was re-graded. Top soil was added; the landfill was then graded and seeded. A security fence was installed around the landfill. Finally, warning signs were placed around the landfill perimeter.

• Three wells were sampled at Landfill No. 1 and four at Landfill No. 2. The sampling parameters were ethylbenzene, styrene, 1,2,3-trichloropropane, antimony, and phenolics, as well as field parameters. Groundwater was sampled semi-annually in 1993 and 1994, and then annually through 1998. During this period, all sampling results for contaminants of concern were below established trigger levels for both Landfill No. 1 and Landfill No. 2, as well as Maximum Contaminant Levels (MCLs) established under the Safe Drinking Water Act. In 1999, EPA determined that the subject monitoring could be discontinued. In 2009, the monitoring resumed at a frequency of at least once every five years. Sampling in 2009 found that all contaminants of concern were below the established trigger levels and MCLs.

• The Site has been inspected regularly as required in the ROD and routine maintenance activities have been performed as needed. The routine maintenance activities have generally consisted of minor fence repair, replacement of warning signs, and mowing the surface of Landfill No. 2.

On September 9, 1993, EPA and DNREC conducted the final construction inspection. On September 29, 1993, EPA signed the Preliminary Site Close Out Report (PCOR), which documented that the PRPs had completed construction activities at the Site. EPA signed the Final Close Out Report on February 19, 2009, which documented completion of all response action, other than operation, maintenance, and five-year reviews.

Cleanup Goals

EPA approved the Sampling and Analysis Plan (Part IV of the Remedial Design Submittal) requiring periodic sampling of groundwater, surface water and sediments. Sampling under the subject Plan was initiated at the start of remedial action (RA) activities and continued for six years. During that time, the monitored contaminants of concern at Landfill No.1 and Landfill No. 2 were well below identified trigger levels. In response to the results of this monitoring, the First Five-Year Review for the Site issued by EPA in 1999 found that monitoring of groundwater and surface water at the Site could be discontinued. However, during the preparation and completion of the Final Close Out Report for the Site in February 2009, EPA determined that monitoring should resume and be conducted at a minimum of once every five years because waste has been left in place at the Site.

Operation and Maintenance (O&M)

The landfills are inspected semi-annually to identify any maintenance activities that need to be conducted to ensure continued performance of the RA. Inspection frequency was quarterly for the first year to provide for seep cover inspection and maintenance. The EPA-approved O&M Plan presented the requirements for the Site inspections, and included a checklist that was used to document inspection observations and results. O&M began following EPA's certification that the RA activities were completed. O&M activities that will continue at the Site are mowing and semi-annual inspections. Also, because waste remains onsite, groundwater and surface water monitoring will be performed once every five years.

An Environmental Protection Easement and Declaration of Restrictive Covenants between Alberta Schmidt, as Grantor, and DNREC, on behalf of the State of Delaware, as Grantee, relating to Landfill No.1 was signed on February 24, 2005. The document was recorded with the Office of the Recorder of Deeds for Kent County, Delaware on April 18, 2005, to implement the institutional controls for Landfill No. 1.

An Environmental Protection Easement and Declaration of Restrictive Covenants between Kowinsky Farms, Inc, as Grantor, and DNREC, on behalf of the State of Delaware, as Grantee, relating to Landfill No. 2 was signed on September 24, 2008. The document was recorded with the Office of the Recorder of Deeds for Kent County, Delaware on November 26, 2008, to implement institutional controls for Landfill No. 2.

The implemented institutional controls (land use restrictions) for both Landfill No. 1 and Landfill No. 2 prohibit disturbance of the onsite containment remedies.

Five-Year Review

EPA has conducted three (3) statutory Five-Year Reviews for this Site. Since the remedies selected for the Site allow hazardous substances, pollutants, or contaminants to remain onsite above levels that allow for unlimited use and unrestricted exposure, statutory Five-Year Reviews are required. These reviews are conducted pursuant to CERCLA Section 121(c), 42 U.S.C. 9621(c), and as provided in the current guidance on Five-Year Reviews.

The first Five-Year Review for the Site was completed on January 6, 1999, and the second Five-Year Review was completed on May 25, 2004. Both of these Five-Year Reviews found the remedy to be not fully protective due to the need for institutional controls in both cases.

The most recent Five-Year Review was completed on May 22, 2009. With the implementation of institutional controls, this Five-Year Review found no issues that affected the current or future protectiveness of the remedy for the Site and concluded that the remedy at the Site is protective over the short term and the long term.

The next Five-Year Review will be completed by May 25, 2014.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

Before the start of construction activities, representatives of the PRPs visited residents whose homes were adjacent to the landfills on both sides of County Road 152. Residents who were at home at the time of the visit were informed of the start date and the nature and duration of the construction activities. The PRP representatives answered questions that the residents asked about the construction activities. Fact sheets advising the residents of the construction activities were given to residents in person or were placed in their mailboxes. EPA issued a fact sheet in July 1993, at about midway through the construction activities. The fact sheet presented a description of the Site remedial action and project status.

EPA notified local officials about upcoming Five-Year Reviews. EPA placed notices in the *Delaware State News* to inform the public that the Five-Year Reviews were being conducted and when the findings of each would be available.

Determination That the Criteria for Deletion Have Been Met

No further response action under CERCLA is appropriate. EPA has determined based on the investigations conducted that all appropriate response actions required have been implemented at the Site. Through the third Five-Year Review, EPA has also determined that the remedy is considered protective of human health and the environment and, therefore, additional remedial measures are not necessary. Other procedures required by 40 CFR 300.425(e) are detailed in Section III of this direct Final Notice of Deletion.

V. Deletion Action

The EPA, with concurrence dated September 16, 2010, of the State of Delaware, through DNREC, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action noncontroversial and routine, EPA is taking it without prior publication. This action will be effective August 2, 2011 unless EPA receives adverse comments by July 5, 2011. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

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

Dated: April 29, 2011.

James W. Newsom,

Acting Regional Administrator, Region III.

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

PART 300—[AMENDED]

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

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

■ 2. Table 1 of Appendix B to part 300 is amended by removing "DE", "Coker's Sanitation Service Landfills", "Kent County".

[FR Doc. 2011–13841 Filed 6–2–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1346–CN]

RIN 0938–AQ23

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System—Update for Rate Year Beginning July 1, 2011 (RY 2012); Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects two technical errors that appeared in the final rule published in the **Federal Register** on May 6, 2011 entitled, "Inpatient Psychiatric Facilities Prospective Payment System—Update for Rate Year Beginning July 1, 2011 (RY 2012)."

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

FOR FURTHER INFORMATION CONTACT: Dorothy Myrick or Jana Lindquist, (410) 786–4533.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2011–10562 of May 6, 2011 (76 FR 26432) (hereinafter referred to as the RY 2012 IPF PPS final rule), there were two technical errors that we describe in the "Summary of Errors" section and correct in the "Correction of Errors" section below.

II. Summary of Errors

In the RY 2012 IPF PPS final rule, on page 26452, in Table 11, we made a typographical error when we listed the diagnosis code "V451" rather than "V4512" for the description of comorbidity for chronic renal failure. In addition, we inadvertently omitted from Table 11 the comorbidity code "V4511" for chronic renal failure. These changes are not substantive changes to the policies or payment methodologies in the final rule. They are changes to conform the final rule to reflect the correct policies, which were implemented on July 1, 2011.

III. Correction of Errors

In FR Doc. 2011–10562 of May 6, 2011 (76 FR 26432), make the following corrections:

• On page 26452, in Table 11—RY 2012 Diagnosis Codes and Adjustment Factors for Comorbidity Categories, in the second column, with the heading "Diagnoses codes," for the renal failure, chronic diagnoses codes, replace code "V451" with "V4512" and add code "V4511."

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons in the rule.

Section 553(d) of the APA ordinarily requires a 30-day delay in the effective date of rules after the date of their publication in the **Federal Register**. This 30-day delay in the effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. This notice merely corrects an error and omission in Table 11 of the RY 2012 IPF PPS final rule and does not make any substantive changes to the policies or payment methodologies. The correct policies were implemented on July 1, 2011. We are simply conforming the RY 2012 IPF PPS final rule to those policies by making the corrections identified herein. We believe that undertaking further notice and comment procedures to incorporate these corrections into the FY 2012 IPF PPS final rule and delaying the effective date of these changes is unnecessary. In addition, we believe it is important for the public to have the correct information as soon as possible, and believe it is contrary to the public interest to delay the dissemination of it. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in the effective date for this correction notice.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774,

Medicare—Supplementary Medical Insurance Program)

Dated: May 27, 2011.

Dawn Smalls,

Executive Secretary to the Department.

[FR Doc. 2011–13839 Filed 6–2–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 100317152–0176–01]

RIN 0648–XA393

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason general category retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted for the June through August 2011 time period, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic tunas General category permitted vessels and Highly Migratory Species Charter/Headboat category permitted vessels (when fishing commercially for BFT).

DATES: Effective June 3, 2011, through August 31, 2011.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006).

The 2011 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2011. The General category season, which was open for the month of January 2011, resumes on June 1, 2011, and continues through December 31, 2011. Starting on June 1, the General category daily retention limit (§ 635.23(a)(2)), is scheduled to revert back to the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip. This default retention limit applies to General category permitted vessels and HMS Charter/Headboat category permitted vessels (when fishing commercially for BFT). Each of the General category time periods (January, June-August, September, October-November, and December) is allocated a portion of the annual General category quota, thereby ensuring extended fishing opportunities in years when catch rates are high and quota is available. For the 2010 fishing year, NMFS adjusted the General category limit from the default level of one large medium or giant BFT as follows: two large medium or giant BFT for January (74 FR 68709, December 29, 2009), and three large medium or giant BFT for June through December (75 FR 30730, June 2, 2010; and 75 FR 51182, August 19, 2010). NMFS adjusted the January 2011 limit to two large medium or giant BFT (75 FR 79309, December 20, 2010).

The 2010 ICCAT recommendation regarding western BFT management resulted in a 2011 U.S. quota of 923.7 mt (not including a 25-mt allocation that the United States uses to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area (NED)). Consistent with the allocation scheme established in the Consolidated HMS FMP, the baseline General category share would be 435.1 mt, and the baseline June through August General category subquota would be 217.6 mt. In order to implement the ICCAT-recommended baseline annual U.S. BFT quota, NMFS published a proposed rule that would modify the U.S. BFT quota and base subquotas for all domestic fishing categories, and establish BFT quota specifications for 2011 (76 FR 13583, March 14, 2011). Until the final rule is effective (likely mid-June 2011), the BFT base quotas codified at § 635.27(a) remain in effect. The currently codified General category quota is 448.6 mt, and the currently codified June through August General category subquota is 224.3 mt.

Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel based on consideration of the criteria provided under § 635.27(a)(8), which include: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

NMFS has considered the set of criteria cited above and their applicability to the General category BFT retention limit for the June-August 2011 General category fishery. Based on General category landings rates during the June through August time-period over the last several years, it is highly unlikely that the June through August subquota will be filled with the default daily retention limit of one BFT per vessel. For example, under the three-fish limit that applied in June–August 2010, June–August landings were approximately 118 mt. This amount is less than both the 217.6 mt available under the 2010 ICCAT recommendation and the 224.3 mt available under the current regulations. NMFS expects landings from the General category in June through August 2011 to be within the available quota, once finalized. Furthermore, slow catch rates early in the season could result in unused quota being added to the later portion of the General category season. Increasing the daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one time-period subquota to the next.

Based on considerations of the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, NMFS has determined that the General category retention limit should be adjusted to allow for retention of the anticipated 2011 General category quota, and that the same approach used for June-August 2010 is warranted. Therefore, NMFS increases the General category retention limit from the default limit to three large

medium or giant BFT, measuring 73 inches or greater, per vessel per day/trip, effective June 3, 2011, through August 31, 2011. Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of three fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the Consolidated HMS FMP.

Monitoring and Reporting

NMFS selected the daily retention limit for June-August 2011 after examining an array of data as it pertains to the determination criteria. These data included, but were not limited to, current and previous catch and effort rates in the BFT fisheries, quota availability, previous public comments on inseason management measures, and stock status, among other data. NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access *http://www.hmspermits.gov,* for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are available on the fishing grounds. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen who depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective June 1, 2011, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns and for the impacted sectors to benefit from the adjustments so as to not preclude fishing opportunities for fishermen who have access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., the default General category retention limit is one fish per vessel per day/trip whereas this action increases that limit and allows retention of additional fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 31, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–13832 Filed 5–31–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 107
Friday, June 3, 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.

GENERAL SERVICES ADMINISTRATION

5 CFR Chapter VII

41 CFR Chapters 101, 102, and 105, and Subtitle F

48 CFR Chapters 5 and 61

[E.O. 13563–OGP–2; Docket 2011–0010; Sequence 2]

Reducing Regulatory Burden; Retrospective Review Under Executive Order 13563 (E.O. 13563)

AGENCY: Office of Governmentwide Policy (OGP), General Services Administration (GSA).

ACTION: Request for information.

SUMMARY: In March 2011, the GSA requested public input on how it can best implement the goals of Executive Order (E.O.) 13563, "Improving Regulation and Regulatory Review." E.O. 13563 was signed by President Obama on January 18, 2011, and calls for an improvement in the creation and review of regulations and better opportunities for the public to be part of this process. Through comments received as well as internal input, GSA has created a retrospective review plan that is now available for comment. The plan is located at *http://www.gsa.gov/open.*

DATES: *Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before July 5, 2011.

ADDRESSES: Submit comments identified by E.O. 13563–OGP–2 by one of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "E.O. 13563–OGP–2" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "E.O. 13563–OGP–2." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "E.O. 13563–OGP–2" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite E.O. 13563–OGP–2, in all correspondence related to this case. 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: The General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417, (202) 501–4755; e-mail at *hada.flowers@gsa.gov.* Please cite E.O. 13563–OGP–2.

SUPPLEMENTARY INFORMATION: On March 22, 2011 GSA published a request for comments in the **Federal Register** (76 FR 15859) regarding the creation of a retrospective review plan that the agency would follow in order to implement E.O. 13563. E.O. 13563, "Improving Regulation and Regulatory Review" was signed by President Obama on January 18, 2011, and calls for an improvement in the creation and review of regulations and better opportunities for the public to be part of this process.

Through comments received as well as internal input, GSA has created a retrospective review plan that is now available for comment. The proposed plan is located at *http://www.gsa.gov/open.*

Dated: May 27, 2011.

Janet Dobbs,

Director, Office of Travel, Transportation and Asset Management.

[FR Doc. 2011–13739 Filed 6–2–11; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. # AMS–CN–11–0026; CN–11–002]

Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing the 2011 amendments to the Cotton Board Rules and Regulations by increasing the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. An amendment is required to adjust the supplemental assessment and ensure that assessments collected on imported raw cotton and the cotton content of imported cotton-containing products and assessments collected on domestically produced cotton are the same. In addition, AMS proposes to update textile trade conversion factors used to determine the raw fiber equivalents of imported cotton-containing products and to expand the number of Harmonized Tariff Schedule (HTS) statistical reporting numbers from the current 706 to 2,371 to assess all imported cotton and cotton-containing products.

DATES: Comments must be received on or before July 5, 2011.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2635–S, Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically through *http://www.regulations.gov.* All comments received will be made available for public inspection at Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2635–S, Washington, DC 20250–0224 during regular business hours. A copy of this notice may be found at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2635–S, Washington, DC 20250–0224, telephone (540) 361–2726, facsimile (202) 690–1718, or e-mail at *Shethir.Riva@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

The Cotton Research and Promotion Act (7 U.S.C. 2101–2118) (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Background

Import Assessment

Amendments to the Act were enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624, 104 Stat. 3909, November 28, 1990). These amendments contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) The authority to assess imported cotton and cotton products; and (2) the termination of the right of cotton producers to demand a refund of assessments.

As amended, the Cotton Research and Promotion Order (7 CFR part 1205) (Order) was approved by cotton producers and importers voting in a referendum held July 17–26, 1991, and the amended Order was published in the **Federal Register** on December 10, 1991 (56 FR 64470). A proposed rule implementing the amended Order was published in the **Federal Register** on December 17, 1991 (56 FR 65450). Implementing rules were published on July 1 and 2, 1992 (57 FR 29181), and (57 FR 29431), respectively.

This proposed rule would increase the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510(b)(2)). The total value of assessments levied is determined using a two-part assessment. The first part of the assessment is levied on the weight of cotton imported at a rate of $1 per 500-pound bale of cotton or $1 per 226.8 kilograms of cotton. The second part of the assessment—known as the supplemental assessment—is levied at a rate of five-tenths of one percent of the value of imported raw cotton or the cotton content of imported cotton-containing products. The supplemental assessment is combined with the per bale equivalent to determine the total value and assessment of the imported cotton or imported cotton-containing products.

Section 1205.510(b)(2) of the Cotton Research and Promotion Rules and Regulations provides for the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of domestically produced cotton, imported raw cotton and the cotton content of imported cotton-containing products. Use of the same weighted average price ensures that assessments paid on domestically produced cotton and assessments on imported cotton are the same. The source of price statistics is *Agricultural Prices,* a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. The current value of imported cotton as published in the **Federal Register** (74 FR 32400) for the purpose of calculating assessments on imported cotton is $0.010880 per kilogram. Using the weighted average price received by U.S. farmers for Upland cotton for the calendar year 2010, the new value of imported cotton is $0.012665 per kilogram.

An example of the complete assessment formula and how the figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

One Dollar per Bale Assessment Converted to Kilograms

A 500-pound bale equals 226.8 kg. ($500 \times .453597$).

$1 per bale assessment equals $0.002 per pound or 0.2 cents per pound (1/500) or $0.004409 per kg or 0.4409 cents per kg. (1/226.8).

Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms

The 2010 calendar year weighted average price received by producers for Upland cotton is $0.749 per pound or $1.651 per kg. ($0.749 \times 2.2046$).

Five tenths of one percent of the weighted average price in kg. equals $0.008256 per kg. ($1.651 \times .005$).

Total Assessment

The total assessment per kilogram of raw cotton is obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.008256 per kg., which equals $0.012665 per kg.

The current assessment on imported cotton is $0.01088 per kilogram of imported cotton. The proposed assessment is $0.012665, an increase of $0.001785 per kilogram. This increase reflects the increase in the average weighted price of Upland Cotton Received by U.S. Farmers during the period January through December 2010. Should the volume of cotton products imported into the U.S. in 2011 remain at the same level as in 2009, one could expect the revised assessment rate to generate approximately an additional $6.67 million in revenue (3.736 billion kilograms * $0.001785/kilogram = $6.67 million).

The Import Assessment Table in section 1205.510(b)(3) indicates the conversion factors used to estimate cotton equivalent quantities and the total assessment per kilogram due for each HTS number subject to assessment. Since the weighted average price of cotton that serves as the basis of the supplemental assessment calculation has changed, total assessment rates reported in this table have been revised.

Conversion Factors

USDA's Economic Research Service (ERS) regularly publishes textile trade data which includes estimates of the amount of cotton contained in imported cotton products. The raw cotton equivalent is the estimated weight of the cotton fiber in the garment adjusted for waste that occurs in spinning, weaving, and cutting. To estimate raw cotton equivalents, ERS uses a set of cotton textile trade conversion factors. The Agricultural Marketing Service (AMS)

currently uses a subset of these conversion factors to estimate cotton equivalents contained in cotton textile products imported into the U.S., which serve as the basis for collecting cotton import assessments for the Cotton Research and Promotion Program.

ERS periodically evaluates how technology-driven improvements in textile production efficiencies—reductions in yarn waste—impacts the total quantity of raw cotton consumed in the production of various textile products. Such an evaluation was conducted initially in 1989 shortly after the U.S. adopted the international system of harmonized tariff codes, again in 2000, and most recently in 2009. The 2009 evaluation of conversion factors, which was based on two published studies [1], concluded that technological advancements in textile production processes have significantly changed since the current conversion factors were established. Furthermore, factors used to convert imported textile products into raw cotton bale-equivalent quantities were revised. Results of the ERS study were published in *Cotton and Wool Outlook,* October 13, 2009 [2].

An analysis of these cotton trade conversion factors for a subset of cotton textile imports on which cotton import assessments are collected revealed that the differences between the current conversion factors and revised conversion factors represent an approximate 4.7 percent reduction in cotton (177 million kilogram) or $1.93 million less in assessments (177 million kilograms * $0.01088/kilogram = $1.93 million). Therefore, AMS proposes to adopt in the Import Assessment Table that appears in section 1205.510(b)(3)(ii) in the regulations the revised textile trade conversion factors to reflect updated textile technologies and to more accurately estimate the amount of cotton contained in cotton-containing imports. This will assure a more fair and accurate assessment of imported cotton-containing products.

[1] MacDonald, Stephen. *China's Cotton Supply and Demand: Issues and Impact on the World Market,* CWS–071–01, November 2007, U.S. Department of Agriculture, Economic Research Service, *http://www.ers.usda.gov/publications/CWS/2007/11Nov/CWS07I01/.*

MacDonald, Stephen and Sarah Whitley. *Fiber Use for Textiles and China's Cotton Textile Exports,* CWS–08i–01, March 2009, U.S. Department of Agriculture, Economic Research Service, *http://www.ers.usda.gov/Publications/CWS/2009/03Mar/CWS08i01/.*

[2] Meyer, Leslie, Stephen MacDonald and James Kiawu. *Cotton and Wool Outlook,* CWS–09h, October 13, 2009, U.S. Department of Agriculture, Economic Research Service, *http://usda.mannlib.cornell.edu/usda/ers/CWS//2000s/2009/CWS-10-13-2009.pdf.*

HTS Codes

In a 2010 report, ERS determined that the current set of HTS codes used by AMS for research and promotion assessment purposes accounted for 89 percent of the total U.S. cotton product imports leaving 11 percent (442 million kilograms) of imported cotton products unassessed. By expanding AMS' list to include 2,371 HTS codes and using the current assessment rate of $0.01088 per kilogram, the Cotton Research and Promotion Program could have collected approximately $4.81 million more in 2009. Based on these findings, the Board requested that AMS take necessary steps to publish its annual import assessment update with updated conversion factors and to increase the number of HTS codes from 706 to 2,371 so that the program collects as close to 100 percent on imported cotton and cotton-containing products, as it does with the domestic producer assessment. In response to the Board request, AMS proposes to expand the list of HTS codes included in 7 CFR part 1205 to include all HTS codes for cotton and cotton-containing products for the collection of import assessments.

The expected total impact of proposed regulatory changes can be estimated by assuming the volume of cotton products imported into the U.S. in 2011 remains at the same level as in 2009. Revising the assessment rate, conversion factors, and expanding the number of cotton-containing HTS code from 706 to 2,371 is expected to yield a net increase in revenues for the Cotton Research and Promotion Program of approximately $10.025 million (24.6 percent increase).

AMS arrived at net revenue increase by incrementally taking into account each of the proposed changes in this rule—the assessment change, updating the cotton conversion factors, and updating the HTS codes.

First, by applying the proposed increased assessment rate to the current volume of cotton-equivalent imports—as determined by applying the current textile trade conversion factors to the 2009 trade volumes of products represented by the current set of 706 HTS codes—would have increased revenues by $6.669 million (3.736 billion kg * ($0.012665/kg − $0.01088/kg) = $6.669 million) to a total of $40.648 million.

Then, by applying updated textile trade conversion factors to the 2009 trade volume of products represented by the current set of 706 HTS codes would decrease the volume of cotton-equivalent imports assessed by 177 million kg to a total of 3.559 billion kg. Valued using the revised assessment rate would reduce total revenues by $2.242 million (177 million kg * $0.012665/kg = −$2.242 million) to a total value of $45.075 million.

Lastly, AMS applied the updated textile trade conversion factors to the set of cotton-containing products represented by all 2,371 HTS codes would increase the 2009 volume of cotton-containing imports assessed by 442 million kg to a total of 4.001 billion kg. Valuing the increased volume using the revised assessment rate would increase revenues by $5.598 million (0.442 billion kg * $0.12665/kg = $5.598 million) to a total of $50.673 million.

A 30-day comment period is provided to comment on the changes to the Cotton Board Rules and Regulations proposed herein. This period is deemed appropriate because this proposal would increase the assessments paid by importers to carry out programs under the Cotton Research and Promotion Order and would ensure that importers are paying the same assessment as domestic cotton producers. Accordingly, the changes proposed in this rule, if adopted, should be implemented as soon as possible in order to facilitate the collection in a timely manner.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], AMS has examined the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be unduly or disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (importers) as having receipts of no more than $7,000,000. This proposed rule would only affect importers of raw cotton and cotton-containing products, raising the total value of assessments paid by the importers under the Cotton Research and Promotion Order. An estimated 13,000 importers are subject to the rules and regulations issued pursuant to the Cotton Research and Promotion Order. Most are considered small entities as defined by the Small Business Administration.

Under the Cotton Research and Promotion Program, assessments are used by the Cotton Board to finance research and promotion programs designed to increase consumer demand for Upland cotton in the United States and international markets. In its most recent certified public accountant audit

(for 2009), producer assessments totaled $30.3 million and importer assessments totaled $29.7 million. AMS has proposed to increase the assessment rate to $0.012665 per kilogram, which is based on the 12-month average of monthly weighted average prices received by U.S. cotton producers. The proposed change assures that importers will be assessed at the same rate as U.S. cotton producers. Should the volume of cotton products imported into the U.S. in 2011 remain at the same level as in 2009, one could expect the revised assessment rate to generate an additional $5.05 million in revenue.

AMS also proposes to revise the conversion factors and expand the number of HTS codes used to calculate the importer assessment. ERS revised factors used to convert imported textile products into raw cotton bale-equivalent quantities to account for improvements in textile production efficiencies. The estimated adoption of the revised conversion factors would lead to a 4.7 percent reduction in cotton or a projected $1.93 million in assessments. Coupled with the revised conversion factors is the proposal to expand the assessed HTS codes from 706 to 2,371. Inclusion of these additional HTS codes will allow the Program to assess almost 100 percent of imported raw cotton and cotton-containing products, as it does with the domestic producer assessment. By expanding AMS' list to include 2,371 HTS codes and using the current assessment rate of 1.088 cents per kilogram, the Cotton Research and Promotion Program could have collected approximately $4.8 million more in 2009.

Under the Cotton Research and Promotion Regulations, importers meeting certain criteria are exempt from assessments. Importers with line-items appearing on U.S. Customs and Border Protection documentation with value of the cotton contained therein results of an assessment of two dollars ($2.00) or less will not be subject to assessments. In addition, imported cotton and products may be exempt from assessment if the cotton content of products is U.S. produced, cotton other than Upland, or imported products that are eligible to be labeled as 100 percent organic under the National Organic Program (7 CFR part 205) and who is not a split operation.

The rule does not impose additional recordkeeping requirements on importers.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35*)* the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 7 CFR part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is 1.2665 cents per kilogram.

(3) * * *

(ii) * * *

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)

HTS No.	Conv. fact.	Cents/kg.
5201000500	0	1.2665
5201001200	0	1.2665
5201001400	0	1.2665
5201001800	0	1.2665
5201002200	0	1.2665
5201002400	0	1.2665
5201002800	0	1.2665
5201003400	0	1.2665
5201003800	0	1.2665
5204110000	1.0526	1.3332
5204200000	1.0526	1.3332
5208112020	1.0852	1.3744

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5208112040	1.0852	1.3744
5208112090	1.0852	1.3744
5208114020	1.0852	1.3744
5208114040	1.0852	1.3744
5208114060	1.0852	1.3744
5208114090	1.0852	1.3744
5208116000	1.0852	1.3744
5208118020	1.0852	1.3744
5208118090	1.0852	1.3744
5208124020	1.0852	1.3744
5208124040	1.0852	1.3744
5208124090	1.0852	1.3744
5208126020	1.0852	1.3744
5208126040	1.0852	1.3744
5208126060	1.0852	1.3744
5208126090	1.0852	1.3744
5208128020	1.0852	1.3744
5208128090	1.0852	1.3744
5208130000	1.0852	1.3744
5208192020	1.0852	1.3744
5208192090	1.0852	1.3744
5208194020	1.0852	1.3744
5208194090	1.0852	1.3744
5208196020	1.0852	1.3744
5208196090	1.0852	1.3744
5208198020	1.0852	1.3744
5208198090	1.0852	1.3744
5208212020	1.0852	1.3744
5208212040	1.0852	1.3744
5208212090	1.0852	1.3744
5208214020	1.0852	1.3744
5208214040	1.0852	1.3744
5208214060	1.0852	1.3744
5208214090	1.0852	1.3744
5208216020	1.0852	1.3744
5208216090	1.0852	1.3744
5208224020	1.0852	1.3744
5208224040	1.0852	1.3744
5208224090	1.0852	1.3744
5208226020	1.0852	1.3744
5208226040	1.0852	1.3744
5208226060	1.0852	1.3744
5208226090	1.0852	1.3744
5208228020	1.0852	1.3744
5208228090	1.0852	1.3744
5208230000	1.0852	1.3744
5208292020	1.0852	1.3744
5208292090	1.0852	1.3744
5208294020	1.0852	1.3744
5208294090	1.0852	1.3744
5208296020	1.0852	1.3744
5208296090	1.0852	1.3744
5208298020	1.0852	1.3744
5208298090	1.0852	1.3744
5208312000	1.0852	1.3744
5208314020	1.0852	1.3744
5208314040	1.0852	1.3744
5208314090	1.0852	1.3744
5208316020	1.0852	1.3744
5208316040	1.0852	1.3744
5208316060	1.0852	1.3744
5208316090	1.0852	1.3744
5208318020	1.0852	1.3744
5208318090	1.0852	1.3744
5208321000	1.0852	1.3744
5208323020	1.0852	1.3744
5208323040	1.0852	1.3744
5208323090	1.0852	1.3744
5208324020	1.0852	1.3744
5208324040	1.0852	1.3744

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5208324060	1.0852	1.3744
5208324090	1.0852	1.3744
5208325020	1.0852	1.3744
5208325090	1.0852	1.3744
5208330000	1.0852	1.3744
5208392020	1.0852	1.3744
5208392090	1.0852	1.3744
5208394020	1.0852	1.3744
5208394090	1.0852	1.3744
5208396020	1.0852	1.3744
5208396090	1.0852	1.3744
5208398020	1.0852	1.3744
5208398090	1.0852	1.3744
5208412000	1.0852	1.3744
5208414000	1.0852	1.3744
5208416000	1.0852	1.3744
5208418000	1.0852	1.3744
5208421000	1.0852	1.3744
5208423000	1.0852	1.3744
5208424000	1.0852	1.3744
5208425000	1.0852	1.3744
5208430000	1.0852	1.3744
5208492000	1.0852	1.3744
5208494010	1.0852	1.3744
5208494020	1.0852	1.3744
5208494090	1.0852	1.3744
5208496010	1.0852	1.3744
5208496020	1.0852	1.3744
5208496030	1.0852	1.3744
5208496090	1.0852	1.3744
5208498020	1.0852	1.3744
5208498090	1.0852	1.3744
5208512000	1.0852	1.3744
5208514020	1.0852	1.3744
5208514040	1.0852	1.3744
5208514090	1.0852	1.3744
5208516020	1.0852	1.3744
5208516040	1.0852	1.3744
5208516060	1.0852	1.3744
5208516090	1.0852	1.3744
5208518020	1.0852	1.3744
5208518090	1.0852	1.3744
5208521000	1.0852	1.3744
5208523020	1.0852	1.3744
5208523035	1.0852	1.3744
5208523040	1.0852	1.3744
5208523045	1.0852	1.3744
5208523090	1.0852	1.3744
5208524020	1.0852	1.3744
5208524035	1.0852	1.3744
5208524040	1.0852	1.3744
5208524045	1.0852	1.3744
5208524055	1.0852	1.3744
5208524065	1.0852	1.3744
5208524090	1.0852	1.3744
5208525020	1.0852	1.3744
5208525090	1.0852	1.3744
5208591000	1.0852	1.3744
5208592015	1.0852	1.3744
5208592025	1.0852	1.3744
5208592085	1.0852	1.3744
5208592090	1.0852	1.3744
5208592095	1.0852	1.3744
5208594020	1.0852	1.3744
5208594090	1.0852	1.3744
5208596020	1.0852	1.3744
5208596090	1.0852	1.3744
5208598020	1.0852	1.3744
5208598090	1.0852	1.3744
5209516015	1.0852	1.3744

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5209516025	1.0852	1.3744
5209516032	1.0852	1.3744
5209516035	1.0852	1.3744
5209516050	1.0852	1.3744
5209516090	1.0852	1.3744
5209520020	1.0852	1.3744
5209520040	1.0852	1.3744
5209590015	1.0852	1.3744
5209590025	1.0852	1.3744
5209590040	1.0852	1.3744
5209590060	1.0852	1.3744
5209590090	1.0852	1.3744
5607909000	0.8421	1.0665
5702491020	0.8947	1.1332
5702491080	0.8947	1.1332
5702990500	0.8947	1.1332
5702991500	0.8947	1.1332
5801250010	1.0852	1.3744
5803001000	1.0852	1.3744
5805003000	1.0852	1.3744
5901904000	0.8139	1.0308
5904901000	0.0326	0.0412
5907002500	0.3798	0.4810
5907003500	0.3798	0.4810
5907008090	0.3798	0.4810
6006211000	1.0965	1.3887
6006221000	1.0965	1.3887
6006231000	1.0965	1.3887
6006241000	1.0965	1.3887
6107910030	1.1918	1.5095
6107910040	1.1918	1.5095
6108210010	1.1790	1.4932
6108210020	1.1790	1.4932
6108910005	1.1790	1.4932
6108910015	1.1790	1.4932
6108910025	1.1790	1.4932
6108910030	1.1790	1.4932
6108910040	1.1790	1.4932
6111201000	1.1918	1.5095
6111202000	1.1918	1.5095
6115101510	1.0965	1.3887
6115198010	1.0965	1.3887
6115298010	1.0965	1.3887
6116101300	0.3463	0.4385
6116101720	0.8079	1.0233
6116926430	1.1542	1.4618
6116927460	1.1542	1.4618
6117808710	1.1542	1.4618
6117909003	1.1542	1.4618
6117909020	1.1542	1.4618
6117909040	1.1542	1.4618
6117909060	1.1542	1.4618
6117909080	1.1542	1.4618
6201122025	0.9979	1.2638
6201122035	0.9979	1.2638
6201922021	1.2193	1.5443
6201922031	1.2193	1.5443
6201922041	1.2193	1.5443
6202122025	1.2332	1.5618
6202122035	1.2332	1.5618
6202921000	0.9865	1.2494
6202922026	1.2332	1.5618
6202922031	1.2332	1.5618
6203221000	1.2332	1.5618
6203424006	1.1796	1.4939
6203424011	1.1796	1.4939
6203424021	1.1796	1.4939
6203424026	1.1796	1.4939
6203424031	1.1796	1.4939
6203424036	1.1796	1.4939

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6204221000	1.2332	1.5618
6204421000	1.2058	1.5271
6204423010	1.2058	1.5271
6204423020	1.2058	1.5271
6204521000	1.2618	1.5981
6204623000	1.1796	1.4939
6204624006	1.1796	1.4939
6204624011	1.1796	1.4939
6204624026	1.1796	1.4939
6204624031	1.1796	1.4939
6204624036	1.1796	1.4939
6204624041	1.1796	1.4939
6205201000	1.1796	1.4939
6206301000	1.1796	1.4939
6209205040	1.1545	1.4621
6213201000	1.1187	1.4169
6216001300	0.3427	0.4340
6216001900	0.3427	0.4340
6216003300	0.5898	0.7470
6216003500	0.5898	0.7470
6216003800	1.1796	1.4939
6216004100	1.1796	1.4939
6302100005	1.1073	1.4024
6302100008	1.1073	1.4024
6302100015	1.1073	1.4024
6302213010	1.1073	1.4024
6302213020	1.1073	1.4024
6302213030	1.1073	1.4024
6302213040	1.1073	1.4024
6302213050	1.1073	1.4024
6302217010	1.1073	1.4024
6302217020	1.1073	1.4024
6302217030	1.1073	1.4024
6302217040	1.1073	1.4024
6302217050	1.1073	1.4024
6302313010	1.1073	1.4024
6302313020	1.1073	1.4024
6302313030	1.1073	1.4024
6302313040	1.1073	1.4024
6302313050	1.1073	1.4024
6302317010	1.1073	1.4024
6302317020	1.1073	1.4024
6302317030	1.1073	1.4024
6302317040	1.1073	1.4024
6302317050	1.1073	1.4024
6302600010	1.1073	1.4024
6302910015	1.1073	1.4024
6304191000	1.1073	1.4024
6505901515	1.1189	1.4170
6505901525	0.5594	0.7085
6505901540	1.1189	1.4170
6505902030	0.9412	1.1921
6505902060	0.9412	1.1921
6505902545	0.5537	0.7012
9404908020	0.9966	1.2622
9404908040	0.9966	1.2622
9404908505	0.6644	0.8415
9404909505	0.6644	0.8415
5205111000	1.0000	1.2665
5205112000	1.0000	1.2665
5205121000	1.0000	1.2665
5205122000	1.0000	1.2665
5205131000	1.0000	1.2665
5205132000	1.0000	1.2665
5205141000	1.0000	1.2665
5205142000	1.0000	1.2665
5205151000	1.0000	1.2665
5205152000	1.0000	1.2665
5205210020	1.0440	1.3222
5205210090	1.0440	1.3222

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5205220020	1.0440	1.3222
5205220090	1.0440	1.3222
5205230020	1.0440	1.3222
5205230090	1.0440	1.3222
5205240020	1.0440	1.3222
5205240090	1.0440	1.3222
5205260020	1.0440	1.3222
5205260090	1.0440	1.3222
5205270020	1.0440	1.3222
5205270090	1.0440	1.3222
5205280020	1.0440	1.3222
5205280090	1.0440	1.3222
5205310000	1.0000	1.2665
5205320000	1.0000	1.2665
5205330000	1.0000	1.2665
5205340000	1.0000	1.2665
5205350000	1.0000	1.2665
5205410020	1.0440	1.3222
5205410090	1.0440	1.3222
5205420021	1.0440	1.3222
5205420029	1.0440	1.3222
5205420090	1.0440	1.3222
5205430021	1.0440	1.3222
5205430029	1.0440	1.3222
5205430090	1.0440	1.3222
5205440021	1.0440	1.3222
5205440029	1.0440	1.3222
5205440090	1.0440	1.3222
5205460021	1.0440	1.3222
5205460029	1.0440	1.3222
5205460090	1.0440	1.3222
5205470021	1.0440	1.3222
5205470029	1.0440	1.3222
5205470090	1.0440	1.3222
5205480020	1.0440	1.3222
5205480090	1.0440	1.3222
5209110020	1.0309	1.3057
5209110025	1.0309	1.3057
5209110035	1.0309	1.3057
5209110050	1.0309	1.3057
5209110090	1.0309	1.3057
5209120020	1.0309	1.3057
5209120040	1.0309	1.3057
5209190020	1.0309	1.3057
5209190040	1.0309	1.3057
5209190060	1.0309	1.3057
5209190090	1.0309	1.3057
5209210020	1.0309	1.3057
5209210025	1.0309	1.3057
5209210035	1.0309	1.3057
5209210050	1.0309	1.3057
5209210090	1.0309	1.3057
5209220020	1.0309	1.3057
5209220040	1.0309	1.3057
5209290020	1.0309	1.3057
5209290040	1.0309	1.3057
5209290060	1.0309	1.3057
5209290090	1.0309	1.3057
5209313000	1.0309	1.3057
5209316020	1.0309	1.3057
5209316025	1.0309	1.3057
5209316035	1.0309	1.3057
5209316050	1.0309	1.3057
5209316090	1.0309	1.3057
5209320020	1.0309	1.3057
5209320040	1.0309	1.3057
5209390020	1.0309	1.3057
5209390040	1.0309	1.3057
5209390060	1.0309	1.3057
5209390080	1.0309	1.3057

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5209390090	1.0309	1.3057
5209413000	1.0309	1.3057
5209416020	1.0309	1.3057
5209416040	1.0309	1.3057
5209430030	1.0309	1.3057
5209430050	1.0309	1.3057
5209490020	1.0309	1.3057
5209490040	1.0309	1.3057
5209490090	1.0309	1.3057
5209513000	1.0309	1.3057
5701901010	1.0000	1.2665
5701901020	1.0000	1.2665
5702109020	0.8500	1.0765
5702505600	0.8500	1.0765
5802110000	1.0309	1.3057
5802190000	1.0309	1.3057
6203322010	1.1715	1.4837
6203322020	1.1715	1.4837
6203322030	1.1715	1.4837
6203322040	1.1715	1.4837
6203322050	1.1715	1.4837
6204322010	1.1715	1.4837
6204322020	1.1715	1.4837
6204522010	1.1988	1.5182
6204522020	1.1988	1.5182
6204522030	1.1988	1.5182
6204522040	1.1988	1.5182
6209201000	1.0967	1.3890
9404901000	0.2104	0.2665
5207100000	0.9474	1.1998
5209420020	0.9767	1.2370
5209420040	0.9767	1.2370
5209420060	0.9767	1.2370
5209420080	0.9767	1.2370
5601102000	0.9767	1.2370
5601210010	0.9767	1.2370
5601210090	0.9767	1.2370
5601220010	0.9767	1.2370
5601220090	0.9767	1.2370
5701902010	0.9474	1.1998
5701902020	0.9474	1.1998
5702392010	0.8053	1.0199
5801210000	0.9767	1.2370
5801221000	0.9767	1.2370
5801229000	0.9767	1.2370
5801230000	0.9767	1.2370
5801240000	0.9767	1.2370
5801250020	0.9767	1.2370
6001210000	0.9868	1.2498
6107110010	1.0727	1.3585
6107110020	1.0727	1.3585
6108199010	1.0611	1.3439
6108310010	1.0611	1.3439
6108310020	1.0611	1.3439
6110202005	1.1214	1.4203
6110202010	1.1214	1.4203
6110202015	1.1214	1.4203
6110202020	1.1214	1.4203
6110202025	1.1214	1.4203
6110202030	1.1214	1.4203
6110202035	1.1214	1.4203
6110202040	1.0965	1.3887
6110202045	1.0965	1.3887
6110202067	1.0965	1.3887
6110202069	1.0965	1.3887
6110202077	1.0965	1.3887
6110202079	1.0965	1.3887
6112390010	1.0727	1.3585
6115103000	0.9868	1.2498
6115190010	0.9868	1.2498

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6115956000	0.9868	1.2498
6115959000	0.9868	1.2498
6116926410	1.0388	1.3156
6116926420	1.0388	1.3156
6116926440	1.0388	1.3156
6116927450	1.0388	1.3156
6116927470	1.0388	1.3156
6116928800	1.0388	1.3156
6116929400	1.0388	1.3156
6201121000	0.8981	1.1374
6201921000	0.8779	1.1119
6201921500	1.0974	1.3898
6202121000	0.8879	1.1245
6203421000	1.0616	1.3445
6203424003	1.0616	1.3445
6204621000	0.8681	1.0995
6204624003	1.0616	1.3445
6205202036	1.0616	1.3445
6205202041	1.0616	1.3445
6205202044	1.0616	1.3445
6207110000	1.0281	1.3021
6207210010	1.0502	1.3301
6207210020	1.0502	1.3301
6207210030	1.0502	1.3301
6207210040	1.0502	1.3301
6207911000	1.0852	1.3744
6207913010	1.0852	1.3744
6207913020	1.0852	1.3744
6208192000	1.0852	1.3744
6208911010	1.0852	1.3744
6208911020	1.0852	1.3744
6208913010	1.0852	1.3744
6208913020	1.0852	1.3744
6209202000	1.0390	1.3159
6211118010	1.0852	1.3744
6211118020	1.0852	1.3744
6211128010	1.0852	1.3744
6211128020	1.0852	1.3744
6211420025	1.1099	1.4056
6211420054	1.1099	1.4056
6211420056	1.1099	1.4056
6211420070	1.1099	1.4056
6211420075	1.1099	1.4056
6211420081	1.1099	1.4056
6213202000	1.0069	1.2752
6215900015	1.0281	1.3021
6302600020	0.9966	1.2622
6302600030	0.9966	1.2622
6302910005	0.9966	1.2622
6302910025	0.9966	1.2622
6302910035	0.9966	1.2622
6302910045	0.9966	1.2622
6302910050	0.9966	1.2622
6302910060	0.9966	1.2622
6304111000	0.9966	1.2622
6304190500	0.9966	1.2622
6507000000	0.3986	0.5049
5705002020	0.7682	0.9729
6109100004	1.0022	1.2692
6109100007	1.0022	1.2692
6109100011	1.0022	1.2692
6109100012	1.0022	1.2692
6109100014	1.0022	1.2692
6109100018	1.0022	1.2692
6109100023	1.0022	1.2692
6109100027	1.0022	1.2692
6109100037	1.0022	1.2692
6109100040	1.0022	1.2692
6109100045	1.0022	1.2692
6109100060	1.0022	1.2692

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6109100065	1.0022	1.2692
6109100070	1.0022	1.2692
6201122010	0.8482	1.0742
6201122020	0.8482	1.0742
6202122010	1.0482	1.3275
6202122020	1.0482	1.3275
6208210010	1.0026	1.2698
6208210020	1.0026	1.2698
6208210030	1.0026	1.2698
6302402010	0.9412	1.1921
5212116010	0.8681	1.0995
5212116020	0.8681	1.0995
5212116030	0.8681	1.0995
5212116040	0.8681	1.0995
5212116050	0.8681	1.0995
5212116060	0.8681	1.0995
5212116070	0.8681	1.0995
5212116080	0.8681	1.0995
5212116090	0.8681	1.0995
5212126010	0.8681	1.0995
5212126020	0.8681	1.0995
5212126030	0.8681	1.0995
5212126040	0.8681	1.0995
5212126050	0.8681	1.0995
5212126060	0.8681	1.0995
5212126070	0.8681	1.0995
5212126080	0.8681	1.0995
5212126090	0.8681	1.0995
5212136010	0.8681	1.0995
5212136020	0.8681	1.0995
5212136030	0.8681	1.0995
5212136040	0.8681	1.0995
5212136050	0.8681	1.0995
5212136060	0.8681	1.0995
5212136070	0.8681	1.0995
5212136080	0.8681	1.0995
5212136090	0.8681	1.0995
5212146010	0.8681	1.0995
5212146020	0.8681	1.0995
5212146030	0.8681	1.0995
5212146090	0.8681	1.0995
5212156010	0.8681	1.0995
5212156020	0.8681	1.0995
5212156030	0.8681	1.0995
5212156040	0.8681	1.0995
5212156050	0.8681	1.0995
5212156060	0.8681	1.0995
5212156070	0.8681	1.0995
5212156080	0.8681	1.0995
5212156090	0.8681	1.0995
5212216010	0.8681	1.0995
5212216020	0.8681	1.0995
5212216030	0.8681	1.0995
5212216040	0.8681	1.0995
5212216050	0.8681	1.0995
5212216060	0.8681	1.0995
5212216090	0.8681	1.0995
5212226010	0.8681	1.0995
5212226020	0.8681	1.0995
5212226030	0.8681	1.0995
5212226040	0.8681	1.0995
5212226050	0.8681	1.0995
5212226060	0.8681	1.0995
5212226090	0.8681	1.0995
5212236010	0.8681	1.0995
5212236020	0.8681	1.0995
5212236030	0.8681	1.0995
5212236040	0.8681	1.0995
5212236050	0.8681	1.0995
5212236060	0.8681	1.0995

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5212236090	0.8681	1.0995
5212246010	0.8681	1.0995
5212246030	0.8681	1.0995
5212246040	0.8681	1.0995
5212246090	0.8681	1.0995
5212256010	0.8681	1.0995
5212256020	0.8681	1.0995
5212256030	0.8681	1.0995
5212256040	0.8681	1.0995
5212256050	0.8681	1.0995
5212256060	0.8681	1.0995
5212256090	0.8681	1.0995
5311004010	0.8681	1.0995
5311004020	0.8681	1.0995
5601101000	0.8681	1.0995
5609001000	0.8421	1.0665
5803002000	0.8681	1.0995
5803003000	0.8681	1.0995
5804291000	0.8772	1.1110
5806101000	0.8681	1.0995
5806310000	0.8681	1.0995
5807100510	0.8681	1.0995
5807102010	0.8681	1.0995
5807900510	0.8681	1.0995
5807902010	0.8681	1.0995
5811002000	0.8681	1.0995
5901102000	0.5643	0.7147
5903101000	0.4341	0.5498
5903201000	0.4341	0.5498
5903901000	0.4341	0.5498
5906100000	0.4341	0.5498
5906911000	0.4341	0.5498
5906991000	0.4341	0.5498
5908000000	0.7813	0.9896
6001910010	0.8772	1.1110
6001910020	0.8772	1.1110
6002904000	0.7895	0.9999
6003201000	0.8772	1.1110
6003203000	0.8772	1.1110
6101200010	1.0200	1.2918
6101200020	1.0200	1.2918
6103220080	0.9747	1.2344
6105100010	0.9332	1.1819
6105100020	0.9332	1.1819
6105100030	0.9332	1.1819
6106100010	0.9332	1.1819
6106100020	0.9332	1.1819
6106100030	0.9332	1.1819
6107910090	0.9535	1.2076
6111203000	0.9535	1.2076
6111204000	0.9535	1.2076
6111205000	0.9535	1.2076
6111206010	0.9535	1.2076
6111206020	0.9535	1.2076
6111206030	0.9535	1.2076
6111206050	0.9535	1.2076
6111206070	0.9535	1.2076
6112110010	0.9535	1.2076
6112110020	0.9535	1.2076
6112110030	0.9535	1.2076
6112110040	0.9535	1.2076
6112110050	0.9535	1.2076
6112110060	0.9535	1.2076
6114200005	0.9747	1.2344
6114200010	0.9747	1.2344
6116105510	0.6464	0.8186
6116107510	0.6464	0.8186
6117106010	0.9234	1.1694
6117808500	0.9234	1.1694
6117809510	0.9234	1.1694

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6201922005	0.9754	1.2354
6201922010	0.9754	1.2354
6201922051	0.9754	1.2354
6201922061	0.9754	1.2354
6202921500	0.9865	1.2494
6202922010	0.9865	1.2494
6202922020	0.9865	1.2494
6202922061	0.9865	1.2494
6202922071	0.9865	1.2494
6203191010	0.9865	1.2494
6203191020	0.9865	1.2494
6203191030	0.9865	1.2494
6203223010	0.9865	1.2494
6203223015	0.9865	1.2494
6203223020	0.9865	1.2494
6203223030	0.9865	1.2494
6203223050	0.9865	1.2494
6203223060	0.9865	1.2494
6203422010	0.9436	1.1951
6203422025	0.9436	1.1951
6203422050	0.9436	1.1951
6203422090	0.9436	1.1951
6203424016	0.9436	1.1951
6203424041	0.9436	1.1951
6203424046	0.9436	1.1951
6204120010	0.9865	1.2494
6204120020	0.9865	1.2494
6204120030	0.9865	1.2494
6204120040	0.9865	1.2494
6204223010	0.9865	1.2494
6204223030	0.9865	1.2494
6204223040	0.9865	1.2494
6204223050	0.9865	1.2494
6204223060	0.9865	1.2494
6204223065	0.9865	1.2494
6204223070	0.9865	1.2494
6204322030	0.9865	1.2494
6204322040	0.9865	1.2494
6204522070	1.0095	1.2785
6204522080	1.0095	1.2785
6204622010	0.9436	1.1951
6204622025	0.9436	1.1951
6204622050	0.9436	1.1951
6204624021	0.9436	1.1951
6204624046	0.9436	1.1951
6204624051	0.9436	1.1951
6204624056	0.9335	1.1823
6204624061	0.9335	1.1823
6204624066	0.9335	1.1823
6205202003	0.9436	1.1951
6205202016	0.9436	1.1951
6205202021	0.9436	1.1951
6205202026	0.9436	1.1951
6205202031	0.9436	1.1951
6205202047	0.9436	1.1951
6205202051	0.9436	1.1951
6205202056	0.9436	1.1951
6205202061	0.9436	1.1951
6205202066	0.9436	1.1951
6205202071	0.9436	1.1951
6205202076	0.9436	1.1951
6206303003	0.9436	1.1951
6206303011	0.9436	1.1951
6206303021	0.9436	1.1951
6206303031	0.9436	1.1951
6206303041	0.9436	1.1951
6206303051	0.9436	1.1951
6206303061	0.9436	1.1951
6209203000	0.9236	1.1697
6209205030	0.9236	1.1697

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6209205035	0.9236	1.1697
6209205045	0.9236	1.1697
6209205050	0.9236	1.1697
6211200410	0.7717	0.9773
6211200430	0.7717	0.9773
6211320010	0.9865	1.2494
6211320015	0.9865	1.2494
6211320025	0.9865	1.2494
6211420010	0.9865	1.2494
6211420020	0.9865	1.2494
6211420040	0.9865	1.2494
6211420060	0.9865	1.2494
6212105010	0.9138	1.1574
6212109010	0.9138	1.1574
6216001720	0.6397	0.8102
6216002410	0.6605	0.8366
6216002910	0.6605	0.8366
6217109510	0.9646	1.2217
6217909003	0.9646	1.2217
6217909025	0.9646	1.2217
6217909050	0.9646	1.2217
6217909075	0.9646	1.2217
6303191100	0.8859	1.1220
6304910020	0.8859	1.1220
6304920000	0.8859	1.1220
6002404000	0.7401	0.9374
6102200010	0.9562	1.2111
6102200020	0.9562	1.2111
6103220010	0.9137	1.1573
6112490010	0.8939	1.1321
6203424051	0.8752	1.1084
6203424056	0.8752	1.1084
6203424061	0.8752	1.1084
6204423030	0.9043	1.1453
6204423040	0.9043	1.1453
6204423050	0.9043	1.1453
6204423060	0.9043	1.1453
6211207810	0.9249	1.1714
6211320030	0.9249	1.1714
6211320040	0.9249	1.1714
6211320050	0.9249	1.1714
6211320060	0.9249	1.1714
6211320070	0.9249	1.1714
6211320075	0.9249	1.1714
6211320081	0.9249	1.1714
6214900010	0.8567	1.0850
6301300010	0.8305	1.0518
6301300020	0.8305	1.0518
6302512000	0.8305	1.0518
5206110000	0.7368	0.9332
5206120000	0.7368	0.9332
5206130000	0.7368	0.9332
5206140000	0.7368	0.9332
5206150000	0.7368	0.9332
5206210000	0.7692	0.9742
5206220000	0.7692	0.9742
5206230000	0.7692	0.9742
5206240000	0.7692	0.9742
5206250000	0.7692	0.9742
5206310000	0.7368	0.9332
5206320000	0.7368	0.9332
5206330000	0.7368	0.9332
5206340000	0.7368	0.9332
5206350000	0.7368	0.9332
5206410000	0.7692	0.9742
5206420000	0.7692	0.9742
5206430000	0.7692	0.9742
5206440000	0.7692	0.9742
5206450000	0.7692	0.9742
5801260010	0.7596	0.9621

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5801260020	0.7596	0.9621
5810910010	0.7596	0.9621
5810910020	0.7596	0.9621
5909001000	0.6837	0.8659
5910001010	0.3798	0.4810
5910001020	0.3798	0.4810
5910001030	0.3798	0.4810
5910001060	0.3798	0.4810
5910001070	0.3798	0.4810
5910001090	0.6837	0.8659
5910009000	0.5697	0.7216
6006219020	0.7675	0.9721
6006219080	0.7675	0.9721
6006229020	0.7675	0.9721
6006229080	0.7675	0.9721
6006239020	0.7675	0.9721
6006239080	0.7675	0.9721
6006249020	0.7675	0.9721
6006249080	0.7675	0.9721
6103106010	0.8528	1.0801
6103106015	0.8528	1.0801
6103106030	0.8528	1.0801
6103220070	0.8528	1.0801
6103320000	0.8722	1.1047
6103421020	0.8343	1.0566
6103421035	0.8343	1.0566
6103421040	0.8343	1.0566
6103421050	0.8343	1.0566
6103421065	0.8343	1.0566
6103421070	0.8343	1.0566
6103422010	0.8343	1.0566
6103422015	0.8343	1.0566
6103422025	0.8343	1.0566
6104196010	0.8722	1.1047
6104196020	0.8722	1.1047
6104196030	0.8722	1.1047
6104196040	0.8722	1.1047
6104220010	0.8528	1.0801
6104220030	0.8528	1.0801
6104220040	0.8528	1.0801
6104220050	0.8528	1.0801
6104220060	0.8528	1.0801
6104220090	0.8528	1.0801
6104320000	0.8722	1.1047
6104420010	0.8528	1.0801
6104420020	0.8528	1.0801
6104520010	0.8822	1.1173
6104520020	0.8822	1.1173
6104621010	0.7509	0.9510
6104621020	0.8343	1.0566
6104621030	0.8343	1.0566
6104622011	0.8343	1.0566
6104622021	0.8343	1.0566
6104622028	0.8343	1.0566
6104622030	0.8343	1.0566
6104622050	0.8343	1.0566
6104622060	0.8343	1.0566
6104632006	0.8343	1.0566
6104632011	0.8343	1.0566
6104632021	0.8343	1.0566
6107210010	0.8343	1.0566
6112202010	0.8722	1.1047
6113009015	0.3489	0.4419
6113009020	0.3489	0.4419
6113009038	0.3489	0.4419
6113009042	0.3489	0.4419
6113009055	0.3489	0.4419
6113009060	0.3489	0.4419
6113009074	0.3489	0.4419
6113009082	0.3489	0.4419

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6114200015	0.8528	1.0801
6114200020	0.8528	1.0801
6114200035	0.8528	1.0801
6114200040	0.8528	1.0801
6114200044	0.8528	1.0801
6114200046	0.8528	1.0801
6114200048	0.8528	1.0801
6114200052	0.8528	1.0801
6114200055	0.8528	1.0801
6114200060	0.8528	1.0801
6115200030	0.7675	0.9721
6115209030	0.7675	0.9721
6115309030	0.7675	0.9721
6116920500	0.8079	1.0233
6116920800	0.8079	1.0233
6211420030	0.8632	1.0933
6216002110	0.5780	0.7320
6302215010	0.7751	0.9817
6302215020	0.7751	0.9817
6302215030	0.7751	0.9817
6302215040	0.7751	0.9817
6302215050	0.7751	0.9817
6302219010	0.7751	0.9817
6302219020	0.7751	0.9817
6302219030	0.7751	0.9817
6302219040	0.7751	0.9817
6302219050	0.7751	0.9817
6302315010	0.7751	0.9817
6302315020	0.7751	0.9817
6302315030	0.7751	0.9817
6302315040	0.7751	0.9817
6302315050	0.7751	0.9817
6302319010	0.7751	0.9817
6302319020	0.7751	0.9817
6302319030	0.7751	0.9817
6302319040	0.7751	0.9817
6302319050	0.7751	0.9817
6302514000	0.7751	0.9817
5211420020	0.7054	0.8934
5211420040	0.7054	0.8934
5212246020	0.7054	0.8934
6005210000	0.7127	0.9027
6005220000	0.7127	0.9027
6005230000	0.7127	0.9027
6005240000	0.7127	0.9027
6103220020	0.7919	1.0030
6103220030	0.7919	1.0030
6103220040	0.7919	1.0030
6103220050	0.7919	1.0030
6201122050	0.6486	0.8215
6201122060	0.6486	0.8215
6202122050	0.8016	1.0152
6202122060	0.8016	1.0152
6211201510	0.7615	0.9644
6211201530	0.7615	0.9644
6211201540	0.7615	0.9644
6211201550	0.7615	0.9644
6211201560	0.7615	0.9644
6211202810	0.8016	1.0152
6211203810	0.8016	1.0152
6211204815	0.8016	1.0152
6211205810	0.8016	1.0152
6211206810	0.8016	1.0152
6211320003	0.6412	0.8121
6211320007	0.8016	1.0152
6211420003	0.6412	0.8121
6211420007	0.8016	1.0152
5204190000	0.6316	0.7999
5207900000	0.6316	0.7999
5210114020	0.6511	0.8246

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5210114040	0.6511	0.8246
5210114090	0.6511	0.8246
5210116020	0.6511	0.8246
5210116040	0.6511	0.8246
5210116060	0.6511	0.8246
5210116090	0.6511	0.8246
5210118020	0.6511	0.8246
5210118090	0.6511	0.8246
5210191000	0.6511	0.8246
5210192020	0.6511	0.8246
5210192090	0.6511	0.8246
5210194020	0.6511	0.8246
5210194090	0.6511	0.8246
5210196020	0.6511	0.8246
5210196090	0.6511	0.8246
5210198020	0.6511	0.8246
5210198090	0.6511	0.8246
5210214020	0.6511	0.8246
5210214040	0.6511	0.8246
5210214090	0.6511	0.8246
5210216020	0.6511	0.8246
5210216040	0.6511	0.8246
5210216060	0.6511	0.8246
5210216090	0.6511	0.8246
5210218020	0.6511	0.8246
5210218090	0.6511	0.8246
5210291000	0.6511	0.8246
5210292020	0.6511	0.8246
5210292090	0.6511	0.8246
5210294020	0.6511	0.8246
5210294090	0.6511	0.8246
5210296020	0.6511	0.8246
5210296090	0.6511	0.8246
5210298020	0.6511	0.8246
5210298090	0.6511	0.8246
5210314020	0.6511	0.8246
5210314040	0.6511	0.8246
5210314090	0.6511	0.8246
5210316020	0.6511	0.8246
5210316040	0.6511	0.8246
5210316060	0.6511	0.8246
5210316090	0.6511	0.8246
5210318020	0.6511	0.8246
5210318090	0.6511	0.8246
5210320000	0.6511	0.8246
5210392020	0.6511	0.8246
5210392090	0.6511	0.8246
5210394020	0.6511	0.8246
5210394090	0.6511	0.8246
5210396020	0.6511	0.8246
5210396090	0.6511	0.8246
5210398020	0.6511	0.8246
5210398090	0.6511	0.8246
5210414000	0.6511	0.8246
5210416000	0.6511	0.8246
5210418000	0.6511	0.8246
5210491000	0.6511	0.8246
5210492000	0.6511	0.8246
5210494010	0.6511	0.8246
5210494020	0.6511	0.8246
5210494090	0.6511	0.8246
5210496010	0.6511	0.8246
5210496020	0.6511	0.8246
5210496090	0.6511	0.8246
5210498020	0.6511	0.8246
5210498090	0.6511	0.8246
5210514020	0.6511	0.8246
5210514040	0.6511	0.8246
5210514090	0.6511	0.8246
5210516020	0.6511	0.8246

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5210516040	0.6511	0.8246
5210516060	0.6511	0.8246
5210516090	0.6511	0.8246
5210518020	0.6511	0.8246
5210518090	0.6511	0.8246
5210591000	0.6511	0.8246
5210592020	0.6511	0.8246
5210592090	0.6511	0.8246
5210594020	0.6511	0.8246
5210594090	0.6511	0.8246
5210596020	0.6511	0.8246
5210596090	0.6511	0.8246
5210598020	0.6511	0.8246
5210598090	0.6511	0.8246
5211110020	0.6511	0.8246
5211110025	0.6511	0.8246
5211110035	0.6511	0.8246
5211110050	0.6511	0.8246
5211110090	0.6511	0.8246
5211120020	0.6511	0.8246
5211120040	0.6511	0.8246
5211190020	0.6511	0.8246
5211190040	0.6511	0.8246
5211190060	0.6511	0.8246
5211190090	0.6511	0.8246
5211202120	0.6511	0.8246
5211202125	0.6511	0.8246
5211202135	0.6511	0.8246
5211202150	0.6511	0.8246
5211202190	0.6511	0.8246
5211202220	0.6511	0.8246
5211202240	0.6511	0.8246
5211202920	0.6511	0.8246
5211202940	0.6511	0.8246
5211202960	0.6511	0.8246
5211202990	0.6511	0.8246
5211310020	0.6511	0.8246
5211310025	0.6511	0.8246
5211310035	0.6511	0.8246
5211310050	0.6511	0.8246
5211310090	0.6511	0.8246
5211320020	0.6511	0.8246
5211320040	0.6511	0.8246
5211390020	0.6511	0.8246
5211390040	0.6511	0.8246
5211390060	0.6511	0.8246
5211390090	0.6511	0.8246
5211410020	0.6511	0.8246
5211410040	0.6511	0.8246
5211420060	0.6511	0.8246
5211420080	0.6511	0.8246
5211430030	0.6511	0.8246
5211430050	0.6511	0.8246
5211490020	0.6511	0.8246
5211490090	0.6511	0.8246
5211510020	0.6511	0.8246
5211510030	0.6511	0.8246
5211510050	0.6511	0.8246
5211510090	0.6511	0.8246
5211520020	0.6511	0.8246
5211520040	0.6511	0.8246
5211590015	0.6511	0.8246
5211590020	0.6511	0.8246
5211590025	0.6511	0.8246
5211590040	0.6511	0.8246
5211590060	0.6511	0.8246
5211590090	0.6511	0.8246
5608902300	0.6316	0.7999
5608902700	0.6316	0.7999
6103398010	0.7476	0.9468

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6104220080	0.7310	0.9258
6104622006	0.7151	0.9057
6104622016	0.7151	0.9057
6104622026	0.7151	0.9057
6104632016	0.7151	0.9057
6104632050	0.7151	0.9057
6107210020	0.7151	0.9057
6110201010	0.7476	0.9468
6110201020	0.7476	0.9468
6110201022	0.7476	0.9468
6110201024	0.7476	0.9468
6110201026	0.7476	0.9468
6110201029	0.7476	0.9468
6110201031	0.7476	0.9468
6110201033	0.7476	0.9468
6203422005	0.7077	0.8963
6204622005	0.7077	0.8963
6212200010	0.6854	0.8680
6212300010	0.6854	0.8680
5212111010	0.5845	0.7403
5212111020	0.6231	0.7891
5212121010	0.5845	0.7403
5212121020	0.6231	0.7891
5212131010	0.5845	0.7403
5212131020	0.6231	0.7891
5212141010	0.5845	0.7403
5212141020	0.6231	0.7891
5212151010	0.5845	0.7403
5212151020	0.6231	0.7891
5212211010	0.5845	0.7403
5212211020	0.6231	0.7891
5212221010	0.5845	0.7403
5212221020	0.6231	0.7891
5212231010	0.5845	0.7403
5212231020	0.6231	0.7891
5212241010	0.5845	0.7403
5212241020	0.6231	0.7891
5212251010	0.5845	0.7403
5212251020	0.6231	0.7891
6116104810	0.4444	0.5628
6203321000	0.6782	0.8590
6204321000	0.6782	0.8590
6204422000	0.6632	0.8399
6206302000	0.6488	0.8216
6211201520	0.6443	0.8160
6303910010	0.6090	0.7713
6303910020	0.6090	0.7713
5309213005	0.5426	0.6872
5309213010	0.5426	0.6872
5309213015	0.5426	0.6872
5309213020	0.5426	0.6872
5309293005	0.5426	0.6872
5309293010	0.5426	0.6872
5309293015	0.5426	0.6872
5309293020	0.5426	0.6872
5311003005	0.5426	0.6872
5311003010	0.5426	0.6872
5311003015	0.5426	0.6872
5311003020	0.5426	0.6872
5407810010	0.5426	0.6872
5407810020	0.5426	0.6872
5407810030	0.5426	0.6872
5407810040	0.5426	0.6872
5407810090	0.5426	0.6872
5407820010	0.5426	0.6872
5407820020	0.5426	0.6872
5407820030	0.5426	0.6872
5407820040	0.5426	0.6872
5407820090	0.5426	0.6872
5407830010	0.5426	0.6872

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5407830020	0.5426	0.6872
5407830030	0.5426	0.6872
5407830040	0.5426	0.6872
5407830090	0.5426	0.6872
5407840010	0.5426	0.6872
5407840020	0.5426	0.6872
5407840030	0.5426	0.6872
5407840040	0.5426	0.6872
5407840090	0.5426	0.6872
5509620000	0.5263	0.6666
5509920000	0.5263	0.6666
5603143000	0.2713	0.3436
5604100000	0.2632	0.3333
5605009000	0.1579	0.2000
5909002000	0.4883	0.6185
5911201000	0.4341	0.5498
5911310010	0.4341	0.5498
5911310020	0.4341	0.5498
5911310030	0.4341	0.5498
5911310080	0.4341	0.5498
5911320010	0.4341	0.5498
5911320020	0.4341	0.5498
5911320030	0.4341	0.5498
5911320080	0.4341	0.5498
5911400000	0.5426	0.6872
5911900000	0.5426	0.6872
6104292049	0.6092	0.7715
6113001005	0.1246	0.1578
6113001010	0.1246	0.1578
6113001012	0.1246	0.1578
6210207000	0.1809	0.2291
6210309020	0.4220	0.5345
6210405020	0.4316	0.5466
6210405040	0.4316	0.5466
6210405050	0.4316	0.5466
6210507000	0.4316	0.5466
6211128030	0.6029	0.7635
6302221010	0.5537	0.7012
6302221030	0.5537	0.7012
6302321010	0.5537	0.7012
6302321030	0.5537	0.7012
6302322010	0.5537	0.7012
6302322030	0.5537	0.7012
6302511000	0.5537	0.7012
6302513000	0.5537	0.7012
6302593020	0.5537	0.7012
6101909010	0.5737	0.7266
6102909005	0.5737	0.7266
6103109010	0.5482	0.6944
6103109020	0.5482	0.6944
6103109030	0.5482	0.6944
6103292058	0.5482	0.6944
6103498010	0.5482	0.6944
6103498034	0.5482	0.6944
6104198010	0.5607	0.7101
6104198020	0.5607	0.7101
6104198030	0.5607	0.7101
6104198040	0.5607	0.7101
6104292010	0.5482	0.6944
6104292022	0.5482	0.6944
6104292034	0.5482	0.6944
6104292065	0.5482	0.6944
6104292081	0.5482	0.6944
6104392010	0.5607	0.7101
6104499010	0.5482	0.6944
6104598010	0.5672	0.7183
6104698010	0.5482	0.6944
6104698022	0.5482	0.6944
6105908010	0.5249	0.6648
6106902510	0.5249	0.6648

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6106903010	0.5249	0.6648
6110909010	0.5607	0.7101
6110909026	0.5607	0.7101
6110909044	0.5607	0.7101
6110909046	0.5607	0.7101
6110909067	0.5607	0.7101
6110909069	0.5607	0.7101
6110909071	0.5607	0.7101
6110909073	0.5607	0.7101
6114909045	0.5482	0.6944
6201199010	0.5613	0.7109
6201999010	0.5487	0.6949
6202199010	0.5678	0.7192
6202999011	0.5549	0.7028
6203199010	0.5549	0.7028
6203199020	0.5549	0.7028
6203199030	0.5549	0.7028
6203399010	0.5549	0.7028
6203498020	0.5308	0.6723
6204198010	0.5549	0.7028
6204198020	0.5549	0.7028
6204198030	0.5549	0.7028
6204198040	0.5549	0.7028
6204294010	0.5549	0.7028
6204294022	0.5549	0.7028
6204294034	0.5549	0.7028
6204294070	0.5549	0.7028
6204294082	0.5549	0.7028
6204398010	0.5549	0.7028
6204495010	0.5549	0.7028
6204594010	0.5678	0.7192
6204696010	0.5308	0.6723
6204699010	0.5308	0.6723
6205903010	0.5308	0.6723
6205904010	0.5308	0.6723
6206100010	0.5308	0.6723
6206900010	0.5308	0.6723
6212900090	0.4112	0.5208
5514110020	0.4341	0.5498
5514110030	0.4341	0.5498
5514110050	0.4341	0.5498
5514110090	0.4341	0.5498
5514120020	0.4341	0.5498
5514120040	0.4341	0.5498
5514191020	0.4341	0.5498
5514191040	0.4341	0.5498
5514191090	0.4341	0.5498
5514199010	0.4341	0.5498
5514199020	0.4341	0.5498
5514199030	0.4341	0.5498
5514199040	0.4341	0.5498
5514199090	0.4341	0.5498
5514210020	0.4341	0.5498
5514210030	0.4341	0.5498
5514210050	0.4341	0.5498
5514210090	0.4341	0.5498
5514220020	0.4341	0.5498
5514220040	0.4341	0.5498
5514230020	0.4341	0.5498
5514230040	0.4341	0.5498
5514230090	0.4341	0.5498
5514290010	0.4341	0.5498
5514290020	0.4341	0.5498
5514290030	0.4341	0.5498
5514290040	0.4341	0.5498
5514290090	0.4341	0.5498
5514303100	0.4341	0.5498
5514303210	0.4341	0.5498
5514303215	0.4341	0.5498
5514303280	0.4341	0.5498

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5514303310	0.4341	0.5498
5514303390	0.4341	0.5498
5514303910	0.4341	0.5498
5514303920	0.4341	0.5498
5514303990	0.4341	0.5498
5514410020	0.4341	0.5498
5514410030	0.4341	0.5498
5514410050	0.4341	0.5498
5514410090	0.4341	0.5498
5514420020	0.4341	0.5498
5514420040	0.4341	0.5498
5514430020	0.4341	0.5498
5514430040	0.4341	0.5498
5514430090	0.4341	0.5498
5514490010	0.4341	0.5498
5514490020	0.4341	0.5498
5514490030	0.4341	0.5498
5514490040	0.4341	0.5498
5514490090	0.4341	0.5498
5602109090	0.4341	0.5498
5602290000	0.4341	0.5498
5604909000	0.2105	0.2666
5606000010	0.1263	0.1600
5606000090	0.1263	0.1600
5703900000	0.3615	0.4579
5802300030	0.4341	0.5498
5804101000	0.4341	0.5498
5808900010	0.4341	0.5498
6101909030	0.5100	0.6459
6104292077	0.4873	0.6172
6104292079	0.4873	0.6172
6106202020	0.4666	0.5909
6107120010	0.4767	0.6038
6107120020	0.4767	0.6038
6115100500	0.4386	0.5555
6116999510	0.4617	0.5847
6204431000	0.4823	0.6108
6204632000	0.4718	0.5976
6207199030	0.4569	0.5787
6210509050	0.1480	0.1874
6210509060	0.1480	0.1874
6210509070	0.1480	0.1874
6210509090	0.1480	0.1874
6211200810	0.3858	0.4887
6211200820	0.3858	0.4887
6213900700	0.4475	0.5668
6213901000	0.4475	0.5668
6302931000	0.4429	0.5610
6302932000	0.4429	0.5610
9404909570	0.2658	0.3366
5510300000	0.3684	0.4666
5516410010	0.3798	0.4810
5516410022	0.3798	0.4810
5516410027	0.3798	0.4810
5516410030	0.3798	0.4810
5516410040	0.3798	0.4810
5516410050	0.3798	0.4810
5516410060	0.3798	0.4810
5516410070	0.3798	0.4810
5516410090	0.3798	0.4810
5516420010	0.3798	0.4810
5516420022	0.3798	0.4810
5516420027	0.3798	0.4810
5516420030	0.3798	0.4810
5516420040	0.3798	0.4810
5516420050	0.3798	0.4810
5516420060	0.3798	0.4810
5516420070	0.3798	0.4810
5516420090	0.3798	0.4810
5516430015	0.3798	0.4810

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5516430020	0.3798	0.4810
5516430035	0.3798	0.4810
5516430080	0.3798	0.4810
5516440010	0.3798	0.4810
5516440022	0.3798	0.4810
5516440027	0.3798	0.4810
5516440030	0.3798	0.4810
5516440040	0.3798	0.4810
5516440050	0.3798	0.4810
5516440060	0.3798	0.4810
5516440070	0.3798	0.4810
5516440090	0.3798	0.4810
6102909015	0.4462	0.5652
6203432500	0.4128	0.5229
6203491500	0.4128	0.5229
6204442000	0.4316	0.5466
6204531000	0.4416	0.5593
6204591000	0.4416	0.5593
6205301000	0.4128	0.5229
6206401000	0.4128	0.5229
6211201555	0.4100	0.5193
6302221020	0.3876	0.4909
6302221040	0.3876	0.4909
6302221050	0.3876	0.4909
6302221060	0.3876	0.4909
6302222010	0.3876	0.4909
6302222020	0.3876	0.4909
6302222030	0.3876	0.4909
6302321020	0.3876	0.4909
6302321040	0.3876	0.4909
6302321050	0.3876	0.4909
6302321060	0.3876	0.4909
6302322020	0.3876	0.4909
6302322040	0.3876	0.4909
6302322050	0.3876	0.4909
6302322060	0.3876	0.4909
6304191500	0.3876	0.4909
6304192000	0.3876	0.4909
5513110020	0.3581	0.4535
5513110040	0.3581	0.4535
5513110060	0.3581	0.4535
5513110090	0.3581	0.4535
5513120000	0.3581	0.4535
5513130020	0.3581	0.4535
5513130040	0.3581	0.4535
5513130090	0.3581	0.4535
5513190010	0.3581	0.4535
5513190020	0.3581	0.4535
5513190030	0.3581	0.4535
5513190040	0.3581	0.4535
5513190050	0.3581	0.4535
5513190060	0.3581	0.4535
5513190090	0.3581	0.4535
5513210020	0.3581	0.4535
5513210040	0.3581	0.4535
5513210060	0.3581	0.4535
5513210090	0.3581	0.4535
5513230121	0.3581	0.4535
5513230141	0.3581	0.4535
5513230191	0.3581	0.4535
5513290010	0.3581	0.4535
5513290020	0.3581	0.4535
5513290030	0.3581	0.4535
5513290040	0.3581	0.4535
5513290050	0.3581	0.4535
5513290060	0.3581	0.4535
5513290090	0.3581	0.4535
5513310000	0.3581	0.4535
5513390010	0.3581	0.4535
5513390011	0.3581	0.4535

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5513390015	0.3581	0.4535
5513390090	0.3581	0.4535
5513390091	0.3581	0.4535
5513410020	0.3581	0.4535
5513410040	0.3581	0.4535
5513410060	0.3581	0.4535
5513410090	0.3581	0.4535
5513491000	0.3581	0.4535
5513492020	0.3581	0.4535
5513492040	0.3581	0.4535
5513492090	0.3581	0.4535
5513499010	0.3581	0.4535
5513499020	0.3581	0.4535
5513499030	0.3581	0.4535
5513499040	0.3581	0.4535
5513499050	0.3581	0.4535
5513499060	0.3581	0.4535
5513499090	0.3581	0.4535
5509530030	0.3158	0.3999
5509530060	0.3158	0.3999
5511200000	0.3158	0.3999
5601300000	0.3256	0.4123
5602909000	0.3256	0.4123
5603941090	0.3256	0.4123
5603943000	0.1628	0.2062
5603949010	0.0326	0.0412
5608903000	0.3158	0.3999
5802200090	0.3256	0.4123
5803005000	0.3256	0.4123
5804300020	0.3256	0.4123
5810100000	0.3256	0.4123
5911900040	0.3158	0.3999
6004100010	0.2961	0.3750
6004100025	0.2961	0.3750
6004100085	0.2961	0.3750
6004902010	0.2961	0.3750
6004902025	0.2961	0.3750
6004902085	0.2961	0.3750
6004909000	0.2961	0.3750
6006310020	0.3289	0.4166
6006310040	0.3289	0.4166
6006310060	0.3289	0.4166
6006310080	0.3289	0.4166
6006320020	0.3289	0.4166
6006320040	0.3289	0.4166
6006320060	0.3289	0.4166
6006320080	0.3289	0.4166
6006330020	0.3289	0.4166
6006330040	0.3289	0.4166
6006330060	0.3289	0.4166
6006330080	0.3289	0.4166
6006340020	0.3289	0.4166
6006340040	0.3289	0.4166
6006340060	0.3289	0.4166
6006340080	0.3289	0.4166
6006410025	0.3289	0.4166
6006410085	0.3289	0.4166
6006420025	0.3289	0.4166
6006420085	0.3289	0.4166
6006430025	0.3289	0.4166
6006430085	0.3289	0.4166
6006440025	0.3289	0.4166
6006440085	0.3289	0.4166
6103230075	0.3655	0.4629
6103292062	0.3655	0.4629
6103398030	0.3738	0.4734
6103411010	0.3576	0.4528
6103411020	0.3576	0.4528
6103412000	0.3576	0.4528
6103498014	0.3655	0.4629

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6103498038	0.3655	0.4629
6104198060	0.3738	0.4734
6104292014	0.3655	0.4629
6104292038	0.3655	0.4629
6104292055	0.3655	0.4629
6104292069	0.3655	0.4629
6104292078	0.3655	0.4629
6104292085	0.3655	0.4629
6104392030	0.3738	0.4734
6104499030	0.3655	0.4629
6104598030	0.3781	0.4789
6104632026	0.3576	0.4528
6104632028	0.3576	0.4528
6104632030	0.3576	0.4528
6104632060	0.3576	0.4528
6104691000	0.3655	0.4629
6104692030	0.3655	0.4629
6104692060	0.3655	0.4629
6104698014	0.3655	0.4629
6104698026	0.3655	0.4629
6105908030	0.3499	0.4432
6106902530	0.3499	0.4432
6106903030	0.3499	0.4432
6107220010	0.3576	0.4528
6107991030	0.3576	0.4528
6107991040	0.3576	0.4528
6107991090	0.3576	0.4528
6108299000	0.3537	0.4480
6108398000	0.3537	0.4480
6108999000	0.3537	0.4480
6109908010	0.3499	0.4432
6110909014	0.3738	0.4734
6110909030	0.3738	0.4734
6110909052	0.3738	0.4734
6110909054	0.3738	0.4734
6110909079	0.3738	0.4734
6110909080	0.3738	0.4734
6110909081	0.3738	0.4734
6110909082	0.3738	0.4734
6112202020	0.3738	0.4734
6114200042	0.3655	0.4629
6114909055	0.3655	0.4629
6114909070	0.3655	0.4629
6116999530	0.3463	0.4385
6117809540	0.3463	0.4385
6201199030	0.3742	0.4739
6201199060	0.3742	0.4739
6201931000	0.2926	0.3706
6201999030	0.3658	0.4633
6202199030	0.3786	0.4794
6202931000	0.2960	0.3748
6202999031	0.3700	0.4685
6203199050	0.3700	0.4685
6203399030	0.3700	0.4685
6203498030	0.3539	0.4482
6204294014	0.3700	0.4685
6204294086	0.3700	0.4685
6204696070	0.3539	0.4482
6204699050	0.3539	0.4482
6207199010	0.3427	0.4340
6207220000	0.3501	0.4434
6210407000	0.1110	0.1406
6210409025	0.1110	0.1406
6210409033	0.1110	0.1406
6210409045	0.1110	0.1406
6210409060	0.1110	0.1406
6211201535	0.3515	0.4451
6211330025	0.3700	0.4685
6211330030	0.3700	0.4685
6211330035	0.3700	0.4685

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6211330040	0.3700	0.4685
6211330054	0.3700	0.4685
6211330058	0.3700	0.4685
6211330061	0.3700	0.4685
6211430076	0.3700	0.4685
6211430078	0.3700	0.4685
6213902000	0.3356	0.4251
6216002120	0.2477	0.3137
5007106010	0.2713	0.3436
5007106020	0.2713	0.3436
5007906010	0.2713	0.3436
5007906020	0.2713	0.3436
5309214010	0.2713	0.3436
5309214090	0.2713	0.3436
5309294010	0.2713	0.3436
5309294090	0.2713	0.3436
5806200010	0.2577	0.3264
5806200090	0.2577	0.3264
6101301000	0.2072	0.2624
6104292026	0.3046	0.3858
6105202010	0.2916	0.3693
6105202020	0.2916	0.3693
6105202030	0.2916	0.3693
6106202010	0.2916	0.3693
6106202030	0.2916	0.3693
6106902550	0.2916	0.3693
6106903040	0.2916	0.3693
6109901007	0.2948	0.3733
6109901009	0.2948	0.3733
6109901013	0.2948	0.3733
6109901025	0.2948	0.3733
6109901047	0.2948	0.3733
6109901049	0.2948	0.3733
6109901050	0.2948	0.3733
6109901060	0.2948	0.3733
6109901065	0.2948	0.3733
6109901070	0.2948	0.3733
6109901075	0.2948	0.3733
6109901090	0.2948	0.3733
6201134030	0.2495	0.3160
6201134040	0.2495	0.3160
6202134020	0.3155	0.3995
6202134030	0.3155	0.3995
6203230050	0.3083	0.3905
6203230055	0.3083	0.3905
6203230060	0.3083	0.3905
6203230070	0.3083	0.3905
6203230080	0.3083	0.3905
6203230090	0.3083	0.3905
6203292010	0.3083	0.3905
6203292020	0.3083	0.3905
6203292030	0.3083	0.3905
6203292035	0.3083	0.3905
6203292050	0.3083	0.3905
6203292060	0.3083	0.3905
6204198060	0.3083	0.3905
6204230030	0.3083	0.3905
6204230035	0.3083	0.3905
6204230040	0.3083	0.3905
6204230045	0.3083	0.3905
6204230050	0.3083	0.3905
6204230055	0.3083	0.3905
6204230060	0.3083	0.3905
6204292010	0.3083	0.3905
6204292015	0.3083	0.3905
6204292020	0.3083	0.3905
6204292025	0.3083	0.3905
6204292030	0.3083	0.3905
6204292040	0.3083	0.3905
6204292050	0.3083	0.3905

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6204294026	0.3083	0.3905
6204294038	0.3083	0.3905
6204294074	0.3083	0.3905
6204398030	0.3083	0.3905
6205302010	0.2949	0.3735
6205302020	0.2949	0.3735
6205302030	0.2949	0.3735
6205302040	0.2949	0.3735
6205302050	0.2949	0.3735
6205302055	0.2949	0.3735
6205302060	0.2949	0.3735
6205302070	0.2949	0.3735
6205302075	0.2949	0.3735
6205302080	0.2949	0.3735
6206403010	0.2949	0.3735
6206403020	0.2949	0.3735
6206403025	0.2949	0.3735
6206403030	0.2949	0.3735
6206403040	0.2949	0.3735
6206403050	0.2949	0.3735
6209301000	0.2917	0.3695
6209302000	0.2917	0.3695
6209901000	0.2917	0.3695
6209902000	0.2917	0.3695
6209903010	0.2917	0.3695
6209903015	0.2917	0.3695
6209903020	0.2917	0.3695
6209903030	0.2917	0.3695
6209903040	0.2917	0.3695
6211201525	0.2929	0.3709
6211201545	0.2929	0.3709
6211202830	0.3083	0.3905
6211203830	0.3083	0.3905
6211204860	0.3083	0.3905
6211205830	0.3083	0.3905
6211206830	0.3083	0.3905
6211207830	0.3083	0.3905
6211330010	0.3083	0.3905
6211330015	0.3083	0.3905
6211330017	0.3083	0.3905
6211430064	0.3083	0.3905
6211430074	0.3083	0.3905
6212200020	0.2856	0.3617
6212300020	0.2856	0.3617
6303921000	0.2768	0.3506
6303922010	0.2768	0.3506
6303922030	0.2768	0.3506
6303922050	0.2768	0.3506
6303990010	0.2768	0.3506
5512290010	0.2170	0.2749
5516430010	0.2170	0.2749
5603910010	0.0217	0.0275
5603910090	0.0651	0.0825
5603920010	0.0217	0.0275
5603920090	0.0651	0.0825
5603930010	0.0217	0.0275
5603930090	0.0651	0.0825
5607502500	0.1684	0.2133
5609004000	0.2105	0.2666
5705002090	0.1808	0.2289
5801310000	0.2170	0.2749
5801320000	0.2170	0.2749
5801330000	0.2170	0.2749
5801360010	0.2170	0.2749
5801360020	0.2170	0.2749
5804109090	0.2193	0.2777
5806103090	0.2170	0.2749
5806393080	0.2170	0.2749
5808104000	0.2170	0.2749
5808107000	0.2170	0.2749

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5810921000	0.2170	0.2749
5810929030	0.2170	0.2749
5810929050	0.2170	0.2749
5810929080	0.2170	0.2749
5903103000	0.1085	0.1374
5903203090	0.1085	0.1374
5903903090	0.1085	0.1374
5905001000	0.1085	0.1374
5905009000	0.1085	0.1374
5906913000	0.1085	0.1374
5906993000	0.1085	0.1374
5911101000	0.1736	0.2199
5911102000	0.0434	0.0550
5911900080	0.2105	0.2666
6002408020	0.1974	0.2500
6002408080	0.1974	0.2500
6002908020	0.1974	0.2500
6002908080	0.1974	0.2500
6101909060	0.2550	0.3230
6102100000	0.2550	0.3230
6102300500	0.1785	0.2261
6102909030	0.2550	0.3230
6103230040	0.2437	0.3086
6103230045	0.2437	0.3086
6103230055	0.2437	0.3086
6103230080	0.2437	0.3086
6103398060	0.2492	0.3156
6103431520	0.2384	0.3019
6103431535	0.2384	0.3019
6103431540	0.2384	0.3019
6103431550	0.2384	0.3019
6103431565	0.2384	0.3019
6103431570	0.2384	0.3019
6103432020	0.2384	0.3019
6103432025	0.2384	0.3019
6103491020	0.2437	0.3086
6103491060	0.2437	0.3086
6103492000	0.2437	0.3086
6103498024	0.2437	0.3086
6103498026	0.2437	0.3086
6103498060	0.2437	0.3086
6104198090	0.2492	0.3156
6104292020	0.2437	0.3086
6104292032	0.2437	0.3086
6104292045	0.2437	0.3086
6104292047	0.2437	0.3086
6104292063	0.2437	0.3086
6104292090	0.2437	0.3086
6104392090	0.2492	0.3156
6104499060	0.2437	0.3086
6104598090	0.2521	0.3192
6104610010	0.2384	0.3019
6104610020	0.2384	0.3019
6104610030	0.2384	0.3019
6104631020	0.2384	0.3019
6104631030	0.2384	0.3019
6104698020	0.2437	0.3086
6104698038	0.2437	0.3086
6104698040	0.2437	0.3086
6105908060	0.2333	0.2955
6107220025	0.2384	0.3019
6108199030	0.2358	0.2986
6108320010	0.2358	0.2986
6108320015	0.2358	0.2986
6108320025	0.2358	0.2986
6108920005	0.2358	0.2986
6108920015	0.2358	0.2986
6108920025	0.2358	0.2986
6108920030	0.2358	0.2986
6108920040	0.2358	0.2986

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6109908030	0.2333	0.2955
6110909020	0.2492	0.3156
6110909022	0.2492	0.3156
6110909024	0.2492	0.3156
6110909038	0.2492	0.3156
6110909040	0.2492	0.3156
6110909042	0.2492	0.3156
6110909064	0.2492	0.3156
6110909066	0.2492	0.3156
6110909088	0.2492	0.3156
6110909090	0.2492	0.3156
6111301000	0.2384	0.3019
6111302000	0.2384	0.3019
6111303000	0.2384	0.3019
6111304000	0.2384	0.3019
6111305010	0.2384	0.3019
6111305015	0.2384	0.3019
6111305020	0.2384	0.3019
6111305030	0.2384	0.3019
6111305050	0.2384	0.3019
6111305070	0.2384	0.3019
6111901000	0.2384	0.3019
6111902000	0.2384	0.3019
6111903000	0.2384	0.3019
6111904000	0.2384	0.3019
6111905010	0.2384	0.3019
6111905020	0.2384	0.3019
6111905030	0.2384	0.3019
6111905050	0.2384	0.3019
6111905070	0.2384	0.3019
6112120010	0.2384	0.3019
6112120020	0.2384	0.3019
6112120030	0.2384	0.3019
6112120040	0.2384	0.3019
6112120050	0.2384	0.3019
6112120060	0.2384	0.3019
6112191010	0.2492	0.3156
6112191020	0.2492	0.3156
6112191030	0.2492	0.3156
6112191040	0.2492	0.3156
6112191050	0.2492	0.3156
6112191060	0.2492	0.3156
6112201060	0.2492	0.3156
6112201070	0.2492	0.3156
6112201080	0.2492	0.3156
6112201090	0.2492	0.3156
6112202030	0.2492	0.3156
6114301010	0.2437	0.3086
6114301020	0.2437	0.3086
6114303014	0.2437	0.3086
6114303020	0.2437	0.3086
6114303030	0.2437	0.3086
6114303042	0.2437	0.3086
6114303044	0.2437	0.3086
6114303052	0.2437	0.3086
6114303054	0.2437	0.3086
6114303060	0.2437	0.3086
6114303070	0.2437	0.3086
6115966020	0.2193	0.2777
6115991420	0.2193	0.2777
6115991920	0.2193	0.2777
6116109500	0.1616	0.2047
6117106020	0.2308	0.2924
6117909015	0.2308	0.2924
6201134015	0.1996	0.2528
6201134020	0.1996	0.2528
6201932010	0.2439	0.3089
6201932020	0.2439	0.3089
6201933511	0.2439	0.3089
6201933521	0.2439	0.3089

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6201999060	0.2439	0.3089
6202134005	0.2524	0.3196
6202134010	0.2524	0.3196
6202199060	0.2524	0.3196
6202932010	0.2466	0.3124
6202932020	0.2466	0.3124
6202935011	0.2466	0.3124
6202935021	0.2466	0.3124
6202999061	0.2466	0.3124
6203199080	0.2466	0.3124
6203399060	0.2466	0.3124
6203431000	0.1887	0.2390
6203432010	0.2359	0.2988
6203432025	0.2359	0.2988
6203432050	0.2359	0.2988
6203432090	0.2359	0.2988
6203491010	0.2359	0.2988
6203491025	0.2359	0.2988
6203491050	0.2359	0.2988
6203491090	0.2359	0.2988
6203492015	0.2359	0.2988
6203492020	0.2359	0.2988
6203498045	0.2359	0.2988
6204198090	0.2466	0.3124
6204294020	0.2466	0.3124
6204294032	0.2466	0.3124
6204294047	0.2466	0.3124
6204294049	0.2466	0.3124
6204294080	0.2466	0.3124
6204294092	0.2466	0.3124
6204495030	0.2466	0.3124
6204533010	0.2524	0.3196
6204533020	0.2524	0.3196
6204594030	0.2524	0.3196
6204594060	0.2524	0.3196
6204631000	0.2019	0.2557
6204631510	0.2359	0.2988
6204631525	0.2359	0.2988
6204631550	0.2359	0.2988
6204633510	0.2412	0.3054
6204633525	0.2412	0.3054
6204633530	0.2412	0.3054
6204633532	0.2309	0.2924
6204633535	0.2309	0.2924
6204633540	0.2309	0.2924
6204691010	0.2359	0.2988
6204691025	0.2359	0.2988
6204691050	0.2359	0.2988
6204692510	0.2359	0.2988
6204692520	0.2359	0.2988
6204692530	0.2359	0.2988
6204692540	0.2309	0.2924
6204692550	0.2309	0.2924
6204692560	0.2309	0.2924
6204696030	0.2359	0.2988
6204699030	0.2359	0.2988
6204699044	0.2359	0.2988
6204699046	0.2359	0.2988
6205901000	0.2359	0.2988
6205903030	0.2359	0.2988
6205904030	0.2359	0.2988
6205904040	0.2359	0.2988
6206100030	0.2359	0.2988
6206100050	0.2359	0.2988
6206900030	0.2359	0.2988
6207997520	0.2412	0.3054
6207998510	0.2412	0.3054
6207998520	0.2412	0.3054
6208110000	0.2412	0.3054
6208199000	0.2412	0.3054

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6208299030	0.2359	0.2988
6208995010	0.2412	0.3054
6208995020	0.2412	0.3054
6208998010	0.2412	0.3054
6208998020	0.2412	0.3054
6209303010	0.2334	0.2956
6209303020	0.2334	0.2956
6209303030	0.2334	0.2956
6209303040	0.2334	0.2956
6210109010	0.2170	0.2749
6210109040	0.2170	0.2749
6211118040	0.2412	0.3054
6211201515	0.2343	0.2967
6211201565	0.2343	0.2967
6211202820	0.2466	0.3124
6211203820	0.2466	0.3124
6211204835	0.2466	0.3124
6211205820	0.2466	0.3124
6211206820	0.2466	0.3124
6211207820	0.2466	0.3124
6211399010	0.2466	0.3124
6211399020	0.2466	0.3124
6211399030	0.2466	0.3124
6211399040	0.2466	0.3124
6211399050	0.2466	0.3124
6211399060	0.2466	0.3124
6211399070	0.2466	0.3124
6211399090	0.2466	0.3124
6211430010	0.2466	0.3124
6211430020	0.2466	0.3124
6211430030	0.2466	0.3124
6211430040	0.2466	0.3124
6211430050	0.2466	0.3124
6211430060	0.2466	0.3124
6211430066	0.2466	0.3124
6211430091	0.2466	0.3124
6211499010	0.2466	0.3124
6211499020	0.2466	0.3124
6211499030	0.2466	0.3124
6211499040	0.2466	0.3124
6211499050	0.2466	0.3124
6211499060	0.2466	0.3124
6211499070	0.2466	0.3124
6211499080	0.2466	0.3124
6211499090	0.2466	0.3124
6212105020	0.2285	0.2893
6212105030	0.2285	0.2893
6212109020	0.2285	0.2893
6212109040	0.2285	0.2893
6212900010	0.1828	0.2315
6212900020	0.1828	0.2315
6212900030	0.1828	0.2315
6214900090	0.2285	0.2893
6216000800	0.0685	0.0868
6216001730	0.1599	0.2025
6216002425	0.1651	0.2091
6216002600	0.1651	0.2091
6216002925	0.1651	0.2091
6216003100	0.1651	0.2091
6217109530	0.2412	0.3054
6217909010	0.2412	0.3054
6217909035	0.2412	0.3054
6217909060	0.2412	0.3054
6217909085	0.2412	0.3054
6301900030	0.2215	0.2805
6302290020	0.2215	0.2805
6302390030	0.2215	0.2805
6302992000	0.2215	0.2805
6304193060	0.2215	0.2805
6304910070	0.2215	0.2805

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6304996040	0.2215	0.2805
6101900500	0.1912	0.2422
6103109080	0.1827	0.2315
6103292066	0.1827	0.2315
6103292068	0.1827	0.2315
6104230032	0.1827	0.2315
6104230034	0.1827	0.2315
6104230036	0.1827	0.2315
6104291030	0.1827	0.2315
6104291040	0.1827	0.2315
6104291050	0.1827	0.2315
6107299000	0.1788	0.2264
6110909028	0.1869	0.2367
6117808770	0.1731	0.2193
6117809570	0.1731	0.2193
6205903050	0.1769	0.2241
6206900040	0.1769	0.2241
6217109520	0.1809	0.2291
6217909005	0.1809	0.2291
6217909030	0.1809	0.2291
6217909055	0.1809	0.2291
6217909080	0.1809	0.2291
9404908536	0.0997	0.1262
5112904000	0.1085	0.1374
5112905000	0.1085	0.1374
5112909010	0.1085	0.1374
5112909090	0.1085	0.1374
5509210000	0.1053	0.1333
5509220010	0.1053	0.1333
5509220090	0.1053	0.1333
5512110010	0.1085	0.1374
5512110022	0.1085	0.1374
5512110027	0.1085	0.1374
5512110030	0.1085	0.1374
5512110040	0.1085	0.1374
5512110050	0.1085	0.1374
5512110060	0.1085	0.1374
5512110070	0.1085	0.1374
5512110090	0.1085	0.1374
5512190005	0.1085	0.1374
5512190010	0.1085	0.1374
5512190015	0.1085	0.1374
5512190022	0.1085	0.1374
5512190027	0.1085	0.1374
5512190030	0.1085	0.1374
5512190035	0.1085	0.1374
5512190040	0.1085	0.1374
5512190045	0.1085	0.1374
5512190050	0.1085	0.1374
5512190090	0.1085	0.1374
5515110005	0.1085	0.1374
5515110010	0.1085	0.1374
5515110015	0.1085	0.1374
5515110020	0.1085	0.1374
5515110025	0.1085	0.1374
5515110030	0.1085	0.1374
5515110035	0.1085	0.1374
5515110040	0.1085	0.1374
5515110045	0.1085	0.1374
5515110090	0.1085	0.1374
5515120010	0.1085	0.1374
5515120022	0.1085	0.1374
5515120027	0.1085	0.1374
5515120030	0.1085	0.1374
5515120040	0.1085	0.1374
5515120090	0.1085	0.1374
5515190005	0.1085	0.1374
5515190010	0.1085	0.1374
5515190015	0.1085	0.1374
5515190020	0.1085	0.1374

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5515190025	0.1085	0.1374
5515190030	0.1085	0.1374
5515190035	0.1085	0.1374
5515190040	0.1085	0.1374
5515190045	0.1085	0.1374
5515190090	0.1085	0.1374
5515290005	0.1085	0.1374
5515290010	0.1085	0.1374
5515290015	0.1085	0.1374
5515290020	0.1085	0.1374
5515290025	0.1085	0.1374
5515290030	0.1085	0.1374
5515290035	0.1085	0.1374
5515290040	0.1085	0.1374
5515290045	0.1085	0.1374
5515290090	0.1085	0.1374
5515999005	0.1085	0.1374
5515999010	0.1085	0.1374
5515999015	0.1085	0.1374
5515999020	0.1085	0.1374
5515999025	0.1085	0.1374
5515999030	0.1085	0.1374
5515999035	0.1085	0.1374
5515999040	0.1085	0.1374
5515999045	0.1085	0.1374
5515999090	0.1085	0.1374
5516210010	0.1085	0.1374
5516210020	0.1085	0.1374
5516210030	0.1085	0.1374
5516210040	0.1085	0.1374
5516210090	0.1085	0.1374
5516220010	0.1085	0.1374
5516220020	0.1085	0.1374
5516220030	0.1085	0.1374
5516220040	0.1085	0.1374
5516220090	0.1085	0.1374
5516230010	0.1085	0.1374
5516230020	0.1085	0.1374
5516230030	0.1085	0.1374
5516230040	0.1085	0.1374
5516230090	0.1085	0.1374
5516240010	0.1085	0.1374
5516240020	0.1085	0.1374
5516240030	0.1085	0.1374
5516240040	0.1085	0.1374
5516240085	0.1085	0.1374
5516240095	0.1085	0.1374
5602101000	0.0543	0.0687
5702312000	0.0895	0.1133
5702322000	0.0895	0.1133
5702391000	0.0895	0.1133
5702421000	0.0895	0.1133
5702422020	0.0895	0.1133
5702422080	0.0895	0.1133
5702492000	0.0895	0.1133
5702502000	0.0895	0.1133
5702505200	0.0895	0.1133
5802200020	0.1085	0.1374
5802300090	0.1085	0.1374
5805001000	0.1085	0.1374
5806400000	0.0814	0.1031
6001106000	0.1096	0.1389
6001220000	0.1096	0.1389
6001290000	0.1096	0.1389
6001999000	0.1096	0.1389
6003301000	0.1096	0.1389
6003306000	0.1096	0.1389
6003401000	0.1096	0.1389
6003406000	0.1096	0.1389
6003901000	0.1096	0.1389

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6003909000	0.1096	0.1389
6005310010	0.1096	0.1389
6005310080	0.1096	0.1389
6005320010	0.1096	0.1389
6005320080	0.1096	0.1389
6005330010	0.1096	0.1389
6005330080	0.1096	0.1389
6005340010	0.1096	0.1389
6005340080	0.1096	0.1389
6005410010	0.1096	0.1389
6005410080	0.1096	0.1389
6005420010	0.1096	0.1389
6005420080	0.1096	0.1389
6005430010	0.1096	0.1389
6005430080	0.1096	0.1389
6005440010	0.1096	0.1389
6005440080	0.1096	0.1389
6005909000	0.1096	0.1389
6006909000	0.1096	0.1389
6103104000	0.1218	0.1543
6103105000	0.1218	0.1543
6103109040	0.1218	0.1543
6103109050	0.1218	0.1543
6103230025	0.1218	0.1543
6103230030	0.1218	0.1543
6103230035	0.1218	0.1543
6103230070	0.1218	0.1543
6103292030	0.1218	0.1543
6103292036	0.1218	0.1543
6103292040	0.1218	0.1543
6103292044	0.1218	0.1543
6103292048	0.1218	0.1543
6103292052	0.1218	0.1543
6103292054	0.1218	0.1543
6103292070	0.1218	0.1543
6103292074	0.1218	0.1543
6103292082	0.1218	0.1543
6104230016	0.1218	0.1543
6104230020	0.1218	0.1543
6104230026	0.1218	0.1543
6104230030	0.1218	0.1543
6104291010	0.1218	0.1543
6104291020	0.1218	0.1543
6104292073	0.1218	0.1543
6104292075	0.1218	0.1543
6107191000	0.1192	0.1509
6107220015	0.1192	0.1509
6107999000	0.1192	0.1509
6110909012	0.1246	0.1578
6112310010	0.1192	0.1509
6112310020	0.1192	0.1509
6112410010	0.1192	0.1509
6112410020	0.1192	0.1509
6112410030	0.1192	0.1509
6112410040	0.1192	0.1509
6114302060	0.1218	0.1543
6115106000	0.1096	0.1389
6115999000	0.1096	0.1389
6116938800	0.1154	0.1462
6116939400	0.1154	0.1462
6116994800	0.1154	0.1462
6116995400	0.1154	0.1462
6203122010	0.1233	0.1562
6203122020	0.1233	0.1562
6203332010	0.1233	0.1562
6203332020	0.1233	0.1562
6203392010	0.1233	0.1562
6203392020	0.1233	0.1562
6203431500	0.1180	0.1494
6203432005	0.1180	0.1494

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6203434010	0.1167	0.1478
6203434015	0.1167	0.1478
6203434020	0.1167	0.1478
6203434030	0.1167	0.1478
6203434035	0.1167	0.1478
6203434040	0.1167	0.1478
6203491005	0.1180	0.1494
6203492030	0.1180	0.1494
6203492045	0.1180	0.1494
6203492050	0.1180	0.1494
6203492060	0.1180	0.1494
6204132010	0.1233	0.1562
6204132020	0.1233	0.1562
6204192000	0.1233	0.1562
6204294084	0.1233	0.1562
6204619040	0.1180	0.1494
6204631200	0.1180	0.1494
6204631505	0.1180	0.1494
6204691005	0.1180	0.1494
6205900710	0.1180	0.1494
6205900720	0.1180	0.1494
6206100040	0.1180	0.1494
6207291000	0.1167	0.1478
6207299030	0.1167	0.1478
6208195000	0.1206	0.1527
6208220000	0.1180	0.1494
6208920010	0.1206	0.1527
6208920020	0.1206	0.1527
6208920030	0.1206	0.1527
6208920040	0.1206	0.1527
6209900500	0.1154	0.1462
6210203000	0.0362	0.0458
6210205000	0.0844	0.1069
6210303000	0.0362	0.0458
6210305000	0.0844	0.1069
6210307000	0.0362	0.0458
6210403000	0.0370	0.0469
6210405031	0.0863	0.1093
6210405039	0.0863	0.1093
6210503000	0.0370	0.0469
6210505020	0.0863	0.1093
6210505031	0.0863	0.1093
6210505039	0.0863	0.1093
6210505040	0.0863	0.1093
6210505055	0.0863	0.1093
6211111010	0.1206	0.1527
6211111020	0.1206	0.1527
6211200420	0.0965	0.1222
6211200440	0.0965	0.1222
6211202400	0.1233	0.1562
6211203400	0.1233	0.1562
6211204400	0.1233	0.1562
6211205400	0.1233	0.1562
6211206400	0.1233	0.1562
6211207400	0.1233	0.1562
6211330003	0.0987	0.1249
6211330007	0.1233	0.1562
6211390510	0.1233	0.1562
6211390520	0.1233	0.1562
6211390530	0.1233	0.1562
6211390540	0.1233	0.1562
6211390545	0.1233	0.1562
6211390551	0.1233	0.1562
6211410030	0.1233	0.1562
6211430003	0.0987	0.1249
6211430007	0.1233	0.1562
6212200030	0.1142	0.1447

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
6212300030	0.1142	0.1447
6212900050	0.0914	0.1157
6214300000	0.1142	0.1447
6214400000	0.1142	0.1447
6215100025	0.1142	0.1447
6215200000	0.1142	0.1447
6304113000	0.1107	0.1402
5512910010	0.0543	0.0687
5512990005	0.0543	0.0687
5512990010	0.0543	0.0687
5512990015	0.0543	0.0687
5512990020	0.0543	0.0687
5512990025	0.0543	0.0687
5512990030	0.0543	0.0687
5512990035	0.0543	0.0687
5512990040	0.0543	0.0687
5512990045	0.0543	0.0687
5512990090	0.0543	0.0687
5516910010	0.0543	0.0687
5516910020	0.0543	0.0687
5516910030	0.0543	0.0687
5516910040	0.0543	0.0687
5516910050	0.0543	0.0687
5516910060	0.0543	0.0687
5516910070	0.0543	0.0687
5516910090	0.0543	0.0687
5516920010	0.0543	0.0687
5516920020	0.0543	0.0687
5516920030	0.0543	0.0687
5516920040	0.0543	0.0687
5516920050	0.0543	0.0687
5516920060	0.0543	0.0687
5516920070	0.0543	0.0687
5516920090	0.0543	0.0687
5516930010	0.0543	0.0687
5516930020	0.0543	0.0687
5516930090	0.0543	0.0687
5516940010	0.0543	0.0687
5516940020	0.0543	0.0687
5516940030	0.0543	0.0687
5516940040	0.0543	0.0687
5516940050	0.0543	0.0687
5516940060	0.0543	0.0687
5516940070	0.0543	0.0687
5516940090	0.0543	0.0687
5701101300	0.0526	0.0667
5701101600	0.0526	0.0667
5701104000	0.0526	0.0667
5701109000	0.0526	0.0667
5701901030	0.0526	0.0667
5701901090	0.0526	0.0667
5701902030	0.0526	0.0667
5701902090	0.0526	0.0667
5702101000	0.0447	0.0567
5702109010	0.0447	0.0567
5702109030	0.0447	0.0567
5702109090	0.0447	0.0567
5702201000	0.0447	0.0567
5702311000	0.0447	0.0567
5702392090	0.0447	0.0567
5702411000	0.0447	0.0567
5702412000	0.0447	0.0567
5702504000	0.0447	0.0567
5702912000	0.0447	0.0567
5702913000	0.0447	0.0567
5702914000	0.0447	0.0567
5702921000	0.0447	0.0567

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. fact.	Cents/kg.
5702929000	0.0447	0.0567
5703201000	0.0452	0.0572
5703202010	0.0452	0.0572
5703302000	0.0452	0.0572
5705001000	0.0452	0.0572
5705002005	0.0452	0.0572
5705002015	0.0452	0.0572
5705002030	0.0452	0.0572
6001920010	0.0548	0.0694
6001920020	0.0548	0.0694
6001920030	0.0548	0.0694
6001920040	0.0548	0.0694
6103101000	0.0637	0.0807
6103292028	0.0609	0.0772
6106901500	0.0583	0.0739
6203433510	0.0590	0.0747
6203433590	0.0590	0.0747
6204110000	0.0617	0.0781
6204412010	0.0603	0.0764
6204412020	0.0603	0.0764
6204432000	0.0603	0.0764
6204510010	0.0631	0.0799
6204510020	0.0631	0.0799
6204532010	0.0631	0.0799
6204532020	0.0631	0.0799
6204611010	0.0590	0.0747
6204611020	0.0590	0.0747
6204619010	0.0590	0.0747
6204619020	0.0590	0.0747
6204619030	0.0590	0.0747
6204632510	0.0590	0.0747
6204632520	0.0590	0.0747
6204633010	0.0603	0.0764
6204633090	0.0603	0.0764
6204692010	0.0590	0.0747
6204692020	0.0590	0.0747
6204692030	0.0590	0.0747
6206203010	0.0590	0.0747
6206203020	0.0590	0.0747
6208992010	0.0603	0.0764
6208992020	0.0603	0.0764
6211121010	0.0603	0.0764
6211121020	0.0603	0.0764
6211410020	0.0617	0.0781
6211410040	0.0617	0.0781
6211410050	0.0617	0.0781
6211410055	0.0617	0.0781
6211410061	0.0617	0.0781
5512210010	0.0326	0.0412
5512210020	0.0326	0.0412
5512210030	0.0326	0.0412
5512210040	0.0326	0.0412
5512210060	0.0326	0.0412
5512210070	0.0326	0.0412
5512210090	0.0326	0.0412

* * * * *

Authority: 7 U.S.C. 2101–2118.

Dated: May 24, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–13495 Filed 6–2–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0562; Directorate Identifier 2011–CE–015–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 310, 320, 340, 401, 402, 411, 414, and 421 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require you to install a placard that prohibits flight into known icing conditions and install a placard that increases published speed on approach 17 mph (15 knots) in case of an inadvertent encounter with icing. This proposed AD was prompted by an investigation of recent and historical icing-related accidents and incidents for the products listed above. We are proposing this AD to prohibit flight into known icing conditions as well as increase the approach speed in case of an inadvertent encounter with icing. This condition, if not corrected, could result in unusual flight characteristics that could lead to loss of control after flight into known icing conditions or an inadvertent encounter with icing conditions. Based on the data, an example of the unusual flight characteristics seen in many of the accidents is high sink speeds that resulted in a hard landing.

DATES: We must receive comments on this proposed AD by July 18, 2011.

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

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

For service information identified in this proposed AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, KS 67277; telephone: (316) 517–6000; fax: (316) 517–8500; Internet: *http://www.cessna.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Jason Brys, Flight Test Engineer, FAA, Wichita Aircraft Certification Office, 1801 S. Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4100; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0562; Directorate Identifier 2011–CE–015–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We are proposing this AD as a result of an investigation of 51 recent and historical icing-related accidents and incidents over the last 30 years that resulted in 36 fatalities for aircraft listed in Cessna Aircraft Company (Cessna) Service Bulletin MEB97–4. The non-fatal events usually resulted in injuries and substantial aircraft damage. The National Transportation Safety Board dockets showed for two non-fatal landing events airplane stall with no activation of the stall warning system.

Our investigation concluded that these aircraft, even if equipped with pneumatic deicing boots, are not approved for flight into known icing and will accrete critical amounts of ice on the protected and unprotected areas. Additionally, data suggest potentially large increases in stall speeds with no stall warning.

The differences in the icing protection systems for the aircraft identified in this proposed AD differ greatly from later models that were approved for icing conditions. Some of these differences could include electric windshield (instead of alcohol), de-ice propeller (some might have had boots without the de-ice propeller), de-ice boots on entire span of wing as well as a different style de-ice boots, different pitot probe and static ports, and some models also added a de-ice boot to the vertical tail.

These airplanes' certification basis did not include Amendment 7 of CAR 3 Dated May 15, 1956, which required an applicant to provide to the pilot the types of operations and meteorological conditions (*e.g.* icing conditions) to which the operation of the airplane is limited by the equipment installed (CAR 3 § 3.772). Therefore, the pilot may not realize that, even with de-ice boots or other similar equipment installed, the airplane is not certificated for flight into known icing conditions. To address this condition and based on the accident history, there is a need to add a limitation to prohibit flight into known icing conditions due to the limitations of the installed equipment.

This condition, if not corrected, could result in unusual flight characteristics that could lead to loss of control after flight into known icing conditions or an inadvertent encounter with icing conditions. Based on the data, an example of the unusual flight characteristics seen in many of the accidents is high sink speeds that resulted in a hard landing.

Relevant Service Information

We reviewed Cessna Service Bulletin MEB97–4, dated March 24, 1997. The service information describes procedures for providing a placard to inform the pilot that flight in known icing conditions is prohibited with the aircraft identified in the service information.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require you to install a placard that prohibits flight into known icing conditions and install a placard that increases published speed on approach 17 mph (15 knots) in case of an inadvertent encounter with icing.

Differences Between the Proposed AD and the Service Information

The service information provides instructions on obtaining a placard from Cessna that prohibits flight into known icing conditions and that the airplane owner or a service facility may install the placard. This proposed AD requires fabrication and installation of an additional placard that increases the published speed on approach 17 mph (15 knots). This proposed AD also requires that a properly certificated aircraft mechanic must fabricate the additional placard and install both of these placards. The airplane owner or pilot is not allowed to fabricate and install the placards unless they are also a properly certificated aircraft mechanic.

Costs of Compliance

We estimate that this proposed AD affects 6,883 airplanes of U.S registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Fabricate and install placards	1 work-hour × $85 per hour = $85	$1	$86	$591,938

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Cessna Aircraft Company: Docket No. FAA–2011–0562; Directorate Identifier 2011–CE–015–AD.

Comments Due Date

(a) We must receive comments by July 18, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Cessna Aircraft Company 310, 320, 340, 401, 402, 411, 414, and 421 airplanes identified in Cessna Aircraft Company Service Bulletin MEB97–4, dated March 24, 1997, certificated in any category.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code: 11, Placards and Markings.

Unsafe Condition

(e) This AD was prompted by an investigation of recent and historical icing-related accidents and incidents for the products listed above. We are issuing this AD to prohibit flight into known icing conditions as well as increase the approach speed in case of an inadvertent encounter with icing. This condition, if not corrected, could result in unusual flight characteristics that could lead to loss of control after flight into known icing conditions or an inadvertent encounter with icing conditions. Based on the data, an example of the unusual flight characteristics seen in many of the accidents is high sink speeds that resulted in a hard landing.

Compliance

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

TABLE 1—ACTIONS, COMPLIANCE, AND PROCEDURES

Actions	Compliance	Procedures
(1) *For all airplanes:* Install placard Cessna part number (P/N) DP0500–13 or fabricate and install a placard that states: "This aircraft is prohibited from flight into known icing conditions."	Within 100 hours time-in-service (TIS) after the effective date of this AD or within 3 calendar months after the effective date of this AD, whichever occurs first.	(i) If installing the placard Cessna P/N DP0500–13, obtain the placard following Cessna Aircraft Company Service Bulletin MEB97–4, dated March 24, 1997. (ii) If fabricating the placard, fabricate the placard using ⅛-inch black lettering on a white background. (iii) The placards must be installed by a properly certificated aircraft mechanic on the instrument panel in clear view of the pilot.
(2) *For all airplanes:* (A) *If Airspeed Indicator Reads in MPH.* Fabricate and install a placard that states: "For inadvertent encounters with icing conditions, increase published speed on approach 17 mph." (B) *If Airspeed Indicator Reads in Knots.* Fabricate and install a placard that states: "For inadvertent encounters with icing conditions, increase published speed on approach 15 KIAS."	Within 100 hours TIS after the effective date of this AD or within 3 calendar months after the effective date of this AD, whichever occurs first.	(i) Fabricate the placard using black lettering at least ⅛-inch on a white background. (ii) The placards must be installed by a properly certificated aircraft mechanic on the instrument panel as close as practical to the airspeed indicator in clear view of the pilot.
(3) *For all airplanes:* After both placards required by paragraphs (f)(1) and (f)(2)(A) or (f)(2)(B) of this AD are installed, make an entry into the aircraft logbook to record compliance with this AD.	Within 100 hours TIS after the effective date of this AD or within 3 calendar months after the effective date of this AD, whichever occurs first.	Not Applicable.

Special Flight Permit

(g) Special flight permits are permitted with the following limitation: Flight into known icing is prohibited.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) For more information about this AD, contact Jason Brys, Flight Test Engineer, Wichita ACO, 1801 S. Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4100; fax: (316) 946–4107.

(j) For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, KS 67277; telephone: (316) 517–6000; fax: (316) 517–8500; Internet: *http://www.cessna.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on May 27, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–13766 Filed 6–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA–2010–0247; Notice No. 11–01]

RIN 2120–AJ70

Safety Enhancements Part 139, Certification of Airports; Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); Reopening of comment period.

SUMMARY: The FAA published a proposed rule on February 1, 2011, to establish minimum standards for training of personnel who access the airport non-movement area (ramp and apron) to help prevent accidents and incidents in that area. This proposal would require a certificate holder to conduct pavement surface evaluations to ensure reliability of runway surfaces in wet weather conditions. This proposed action would also require a Surface Movement Guidance Control System (SMGCS) plan if the certificate holder conducts low visibility operations, facilitating the safe movement of aircraft and vehicles in low visibility conditions. Finally, this proposal would clarify the applicability of part 139 and explicitly prohibit fraudulent or intentionally false statements in a certificate application or record required to be maintained. After the comment period closed, the FAA became aware that the initial regulatory evaluation had not been posted to the rulemaking docket. This action reopens the comment period to allow the public to review and comment on that document, which is now in the docket.

DATES: The comment period for the NPRM published on February 1, 2011 (76 FR 5510), closed on April 4, 2011, and was reopened (76 FR 20570) April 13, 2011, until May 13, 2011. This document reopens the comment period until July 5, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0247 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12–140, West

Building Ground Floor, Washington, DC 20590–0001.

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

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

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kenneth Langert, AAS–300, Office of Airports Safety and Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 493–4529; e-mail *kenneth.langert@faa.gov.*

SUPPLEMENTARY INFORMATION: See the "Additional Information" section for information on how to comment on this proposal and how the FAA will handle comments received. The "Additional Information" section also contains related information about the docket, privacy, the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

Background

On February 1, 2011, the FAA issued Notice No. 11–01, entitled "Safety Enhancements Part 139, Certification of Airports" (76 FR 5510). The comment period closed on April 4, 2011. On April 13, 2011, the FAA reopened the comment period for 30 days to allow additional opportunity to comment on the NPRM (76 FR 20570). The comment period then closed on May 13, 2011.

During the comment period, several commenters stated the FAA's economic evaluation for this proposed rule was not available for review and comment. That document is now in the rulemaking docket. The FAA recognizes additional time is necessary to review and comment on the initial regulatory evaluation.

Reopening of Comment Period

In accordance with § 11.47(c) of title 14, Code of Federal Regulations, the FAA has determined that re-opening of the comment period is consistent with the public interest, and that good cause exists for taking this action. To accomplish the strategies for providing additional information to the public, the FAA has determined that re-opening the comment period is consistent with the public interest, and that good cause exists for this action. Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

Accordingly, the comment period for Notice No. 11–01 is reopened until July 5, 2011.

Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in Notice No. 11–01. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on Notice 11–1, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

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

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

B. Availability of Rulemaking Documents

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

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

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

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

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

All documents the FAA considered in developing this Notice 11–01, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

Issued in Washington, DC, on May 25, 2011.

Michael J. O'Donnell,

Director of Airport Safety and Standards.

[FR Doc. 2011–13824 Filed 6–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT–OST–2011–0098]

RIN 2105–AD87

Nondiscrimination on the Basis of Disability in Air Travel; Accessibility of Aircraft and Stowage of Wheelchairs

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department of Transportation is seeking comment on whether or not the prohibition against using the seat-strapping method (placing a wheelchair across a row of seats using a strap kit with safety-approval from the Federal Aviation Administration or applicable foreign government) to transport a passenger's wheelchair in the cabin of newer aircraft as set forth in DOT regulations should be deleted, modified, or remain as written.

DATES: Interested persons are invited to submit comments regarding this proposal. Comments must be received on or before August 2, 2011.

ADDRESSES: You may file comments identified by the docket number DOT–OST–2011–0098 by any of the following methods:

- *Federal Rulemaking Portal:* go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., 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 Ave., SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2011–0098 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Amna Arshad, Trial Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue, SE., Room W96–405, Washington, DC 20590, (202) 366–9179. You may also contact Blane A. Workie, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue, SE., Room W96–464, Washington, DC 20590, (202) 366–9342. Arrangements to receive this notice in an alternative format may be made by contacting the above named individuals.

SUPPLEMENTARY INFORMATION:

Summary of Preliminary Regulatory Analysis

The preliminary regulatory analysis suggests that the benefits of the proposed requirement to allow carriers to use the seat-strapping method to stow a passenger's manual folding wheelchair in the cabin of "new" aircraft exceed its costs. This analysis, outlined in the table below, finds that the expected net present value of the rule over 20 years at a 7% discount rate would amount to $243 million to $273 million.

		Present value (millions)
Total Quantified Benefits	20 years, 7% discounting	$243 to $273.
Total Quantified Costs *	20 years, 7% discounting	$0.
Net Quantified Benefits	20 years, 7% discounting	$243 to $273.

* No basis for concluding that rule would impose quantified costs on any party.

Information on additional benefits and costs for which quantitative estimates could not be developed is provided in the Regulatory Analysis and Notices section.

Background

The Air Carrier Access Act (ACAA) prohibits discrimination by U.S. and foreign carriers against passengers with disabilities. (See 49 U.S.C. 41705) Its implementing regulation, 14 CFR Part 382, contains detailed standards and requirements to ensure carriers provide nondiscriminatory service to passengers with disabilities. This rule was updated on May 13, 2008, to, among other things, cover foreign air carriers. (73 FR 27614) This NPRM seeks comment on whether the Department should amend the provisions in the May 13, 2008, rule pertaining to the stowage of one passenger's manual folding wheelchair in the cabin of aircraft with 100 or more passenger seats (§ 382.67) in order to allow the continued use of the seat-strapping method (placing a wheelchair across a row of seats using a strap kit approved by the Federal Aviation Administration or applicable foreign government).

When the requirement for in-cabin space for a folding passenger wheelchair was originally adopted in 1990, the Department's intention was that new aircraft would have a designated space (e.g., a closet or similar compartment) in which a passenger's wheelchair could be stowed. (55 FR 8007) The practice of seat-strapping was not authorized, or even mentioned, in the regulatory text or the original rulemaking. The practice of seat-strapping was subsequently permitted under Department enforcement policy as an alternative to compliance with the regulation's requirement with respect to accommodating a passenger's manual folding wheelchair in the cabin. The Department determined in the final rule issued in 2008 that it was best not to carry over this policy to the new rule with respect to new aircraft (i.e., aircraft ordered after May 13, 2009, or delivered after May 13, 2011), and required, consistent with the intent of the original 1990 rule, that new aircraft be capable of accommodating a passenger's wheelchair in a priority stowage space in the cabin. The Department made this

decision because of concerns that seat-strapping (1) Is an awkward way of transporting a wheelchair in the cabin; (2) can result in less timely stowage and return of the passenger's wheelchair; (3) can be more conspicuous and bring unwanted attention to passengers with disabilities; (4) can be more likely to result in damage to the passenger's wheelchair; and (5) can result in last-minute surprise denials of service to other passengers holding confirmed tickets on full flights. Existing aircraft were not required to be retrofitted, however, and airlines could continue to use seat-strapping on those aircraft.

Within six months of issuance of the May 13, 2008, final rule, the Department received two requests to continue the use of seat-strapping. The Department also received a request to stow a passenger's manual folding wheelchair in a designated cargo stowage space as an alternative to stowing the passenger's wheelchair in the cabin of aircraft. These requests were submitted pursuant to the "equivalent alternative" provision of the May 13, 2008, final rule, which allows carriers to request a determination that a carrier's policy, practice, or other accommodation provides substantially equivalent accessibility to passengers with disabilities compared to a specified provision of Part 382. (See 14 CFR 382.9)

The Department denied the two requests to continue the use of seat-strapping because it was contrary to the explicit language of the rule, and a change in the substance of the rule must be addressed through rulemaking. (See Response to Application of JetBlue Airways Corp., for an Equivalent Alternative Determination from 14 CFR 382.123(c), Docket DOT–OST–2008–0273–0063 (filed July 22, 2009); Response to Application of US Airways, Inc., for an Equivalent Alternative Determination from 14 CFR 382.123(c), Docket DOT–OST–2008–0273–0064 (filed July 22, 2009).) The Department, however, granted a request to stow a passenger's manual folding wheelchair in a designated cargo stowage space as an alternative to stowing the wheelchair in the cabin on a one-year trial basis subject to numerous conditions to ensure the same or greater accessibility to persons with a disability. (See Response to Application of Aerovias Del Continente Americano S.A., for an Equivalent Alternative Determination from 14 CFR 382.67 and 14 CFR 382.123, Docket DOT–OST–2008–0273–0101.)

The Department believes that the issues raised by carriers with regard to using the seat-strapping method should be considered further. Therefore, the Department is seeking comment on whether carriers should be allowed to use the seat-strapping method to stow a passenger's manual folding wheelchair in the cabin of "new" aircraft. The Department wants to make clear that, by issuing this NPRM, we are not taking a position on the merits of the use of seat-strapping. The proposed regulatory text is language that the Department could use if we decide to change the rule. Its presence does not mean that making such a change is the Department's policy preference at this time.

In addition to comments on whether or not seat-strapping should be allowed as an alternative to the requirement for a designated stowage space in the cabin for a passenger wheelchair, the Department has developed a series of questions to assist us in determining the impact of seat-strapping on passengers with a disability, other members of the traveling public, and carriers. The Department will consider information in response to the questions posed below in determining whether carriers should be allowed to use seat-strapping. The Department specifically seeks comments on the following broad categories: Potential stigmatization associated with the seat-strapping method, impact on other passengers that may result from the seat-strapping method, compliance cost if the prohibition on the use of the seat-strapping method remains, complaints relating to damage to wheelchairs or delay in the return and stowage of a passenger's wheelchair, training of carrier employees, identification of priority space for assistive devices, additional accommodations that may be required if seat-strapping method is permitted, and other miscellaneous questions.

Stigmatization

(1) Concerns over potential stigmatization or embarrassment associated with the seat-strapping method, including but not limited to, how a passenger might feel if he or she is made aware that other passengers could be denied boarding on a full flight in order to accommodate his or her wheelchair in the cabin of the aircraft and how carriers might address such situations; and

(2) Procedures currently used, or that could be created, to minimize the potential stigmatization or embarrassment associated with the seat-strapping method.

Impact on Other Passengers

(1) The effect the seat-strapping method would have on passengers other than those stowing a wheelchair in the cabin of an aircraft;

(2) Procedures currently used, or that could be created, to minimize the possibility that passengers will be denied boarding due to the use of the seat-strapping method; and

(3) The number of passengers denied boarding per year due to the use of the seat-strapping method on old aircraft (i.e., aircraft ordered on or before May 13, 2009, or aircraft delivered on or before May 13, 2011) and a description of the process by which such data were collected.

Compliance Cost

(1) The cost to carriers if the prohibition on the use of the seat-strapping method remains as currently written in 14 CFR 382.123(c) (i.e., prohibited on any aircraft ordered after May 13, 2009, or delivered after May 13, 2011);

(2) The effects, other than cost, that continuing the prohibition of the seat-strapping method would have on carriers; and

(3) Benefits to using the seat-strapping method, aside from cost savings to carriers, over the requirement to have a priority stowage space.

(4) Any increased costs to carriers, such as increased purchases of wheelchair strapping kits, that would result from allowing the seat-strapping method.

Complaints Regarding Damage to Wheelchairs and Timely Stowage and Return of a Passenger's Wheelchair

(1) Concerns regarding damage to a wheelchair if the seat-strapping method is allowed;

(2) Complaints received regarding wheelchair damage from using the seat-strapping method;

(3) Complaints received regarding wheelchair damage from stowing a wheelchair in a priority space in the cabin (*e.g.,* closets), using a method other than the seat-strapping method; and

(4) Concerns regarding less timely stowage and return of a passenger's manual folding wheelchair when using the seat-strapping method.

Training

(1) How do carriers currently ensure that their employees know that passengers can use the seat-strapping method to stow wheelchairs; and

(2) Whether the existing requirement for carriers to train their public contact employees to proficiency on the proper and safe operation of any equipment used to accommodate passengers with a disability is sufficient to ensure carrier

employees know the proper manner in which stow a wheelchair across a row of seats using a strap kit.

Identification of Priority Space for Stowage of Assistive Devices

(1) Whether the Department should require carriers to visually identify through some sort of placard (e.g., a placard that notes the space is a "Priority Stowage Space for Assistive Devices," with the International Symbol for Access) that wheelchairs, other mobility aids, and other assistive devices have priority for stowage in the cabin compartment over other items; and

(2) Whether there is any benefit in requiring airlines to inform passengers of the location of seats where a folding manual wheelchair may be stowed.

Additional Accommodations if Seat Strapping Method Is Allowed

(1) Whether the dimensions of a wheelchair that must fit without disassembly into the priority space currently 13 inches by 36 inches by 42 inches or less should be increased if the Department allows carriers to use the seat-strapping method as a means of stowing a folding manual wheelchair in the passenger cabin;

(2) Given the wide variety of wheelchairs and mobility devices on the market, what dimensions would be a reasonable compromise between the needs of passengers and the space constraints of carriers using the seat-strapping method to stow wheelchairs; and

(3) If seat-strapping is allowed, should carriers be required to accommodate more than one folding wheelchair in the passenger cabin when the stowage of additional wheelchairs would not displace other passengers.

Other

(1) Whether the Department should prohibit or allow U.S. and foreign carriers to remove existing closets or other priority spaces used for stowing a passenger's wheelchair on aircraft covered by Part 382 (i.e., should any requirement that is adopted only apply to new aircraft);

(2) Whether the Department should allow the use of the seat-strapping method only on single-aisle aircraft as there is sufficient space for a closet or other priority stowage space on twin-aisle aircraft; and

(3) Any other information or data that are relevant to the Department's decision.

We invite all interested persons to comment on the issues raised in this notice. Our final action will be based on the comments and supporting evidence filed in this docket and on our own analysis.

Regulatory Analysis and Notices

A. Executive Order 12866 (Regulatory Planning and Review), DOT Regulatory Policies and Procedures, and Executive Order 13563 (Improving Regulation and Regulatory Review)

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review) and is consistent with the requirements in both orders. Executive Order 13563 refers to nonquantifiable values, including equity and fairness.

The Regulatory Evaluation estimates that the monetary benefit of allowing airlines to use seat-strapping exceeds the monetary costs. Specifically, the benefit of allowing carriers to use seat-strapping would likely result in a total net revenue gain over a 20-year period of $243–$273 million present value. This represents revenue derived from seats that would not have to be removed in order to make space for a permanent wheelchair stowage area. No mandatory additional cost will be imposed on carriers if seat-strapping is allowed as an alternative to complying with the current requirement to provide a priority space for wheelchair stowage. It is unclear whether allowing carriers to use the seat-strapping method would impose costs related to damage or delayed stowage and return of wheelchairs on passengers with disabilities. Based on a review of the Department's consumer complaint database and discussions with the industry, the Department has no evidence that such consequences are likely and seeks comment particularly from persons with disabilities and disability organizations. Furthermore, non-disabled, ticketed passengers may be required to forego their seats on a full flight in order to accommodate a wheelchair, but the Department has not received any complaints regarding this practice. We request from the public any information that will improve the accuracy of our estimates or aid us in determining whether seat-strapping offers advantages or disadvantages that have not been considered. A copy of the Preliminary Regulatory Analysis has been placed in the docket.

B. Executive Order 13132 (Federalism)

This Notice of Proposed Rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This notice does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. It does not propose any regulation that imposes substantial direct compliance costs on State and local governments. It does not propose any regulation that preempts State law, because States are already preempted from regulating in this area under the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination With Indian Tribal Governments"). Because none of the options on which we are seeking comment would significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. We hereby certify that the rule proposed in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A direct air carrier or a foreign air carrier is a small business if it provides air transportation only with small aircraft (i.e., aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds). *See* 14 CFR 399.73. The subject matter of this notice only affects aircraft with 100 or more passenger seats. Therefore, this requirement would not apply to small businesses. In addition, the proposed change would lessen the burden on U.S. and foreign air carriers by allowing the carriers to retain their current seating configuration and not remove seats to install a priority space in the cabin for a passenger

wheelchair. We invite comment to facilitate our assessment of the potential impact of these initiatives on small entities.

E. Paperwork Reduction Act

This rule imposes no new information reporting or record keeping necessitating clearance by the Office of Management and Budget.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this notice.

Issued this 26th day of May 2011, at Washington, DC.

Ray LaHood,

Secretary of Transportation.

List of Subjects in 14 CFR Part 382

Air carriers, Civil rights, and Individuals with disabilities.

For the reasons set forth in the preamble, the Department is proposing to amend 14 CFR part 382, as follows:

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 41705.

2. Section 382.67 is revised to read as follows:

§ 382.67 What is the requirement for priority space in the cabin to store passengers' wheelchairs?

(a) As a carrier, you must ensure that there is a priority space (e.g., a closet or a row of seats where a wheelchair may be strapped using a strap kit approved by the Federal Aviation Administration or applicable foreign government) in the cabin of sufficient size to stow at least one typical adult-sized folding, collapsible, or break-down manual passenger wheelchair, the dimensions of which are 13 inches by 36 inches by 42 inches or less without having to remove the wheels or otherwise disassemble it. This requirement applies to any aircraft with 100 or more passenger seats.

(b) This space must be other than the overhead compartments and under-seat spaces routinely used for passengers' carry-on items.

(c) If passengers holding confirmed reservations are not able to travel on a flight because their seats are being used to stow a passenger's wheelchair as required by paragraph (a) of this section, carriers must compensate those passengers in an amount to be calculated as provided for in instances of involuntary denied boarding under 14 CFR part 250, where part 250 applies.

(d) As a carrier, you must never request or suggest that a passenger should not stow his or her wheelchair in the cabin to accommodate other passengers (e.g., informing a passenger that stowing a wheelchair in the cabin will require other passengers to be removed from the flight), or for any other non-safety related reason (e.g., easier for the carrier if the wheelchair is stowed in the cargo).

(e) As a foreign carrier, you must meet the requirement of paragraph (a) of this section for new aircraft ordered after May 13, 2009, or delivered after May 13, 2010. As a U.S. carrier, this requirement applies to you with respect to new aircraft you operate that were ordered after April 5, 1990, or which were delivered after April 5, 1992.

§ 382.123 [Amended]

3. Section 382.123(c) is removed.

[FR Doc. 2011–13802 Filed 6–2–11; 8:45 am]

BILLING CODE 4910–9X–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0719–201115; FRL–9314–9]

Approval and Promulgation of Air Quality Implementation Plans; Ohio, Kentucky, and Indiana; Cincinnati-Hamilton Nonattainment Area; Determination of Attainment of the 1997 Annual Fine Particulate Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make two determinations regarding the tri-state Cincinnati-Hamilton (Ohio, Kentucky, and Indiana) fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter referred to as "the Cincinnati Area" or "the Area"). First, EPA is proposing to determine that the Area has attained the 1997 annual average $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS). This proposed determination of attainment is based upon complete, quality-assured and certified ambient air monitoring data for the 2007–2009 period showing that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. If EPA finalizes this proposed determination of attainment, the requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be suspended for so long as the Area continues to attain the annual $PM_{2.5}$ NAAQS. Second, EPA is also proposing to determine, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that the Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

DATES: Comments must be received on or before July 5, 2011.

ADDRESSES: Submit your general comments and your comments specifically regarding the Kentucky portion of the Cincinnati Area, identified by Docket ID No. EPA–R04–OAR–2010–0719, 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) 562–9040.

4. *Mail:* EPA–R04–OAR–2010–0719, 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:* 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 normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Submit your comments regarding the Ohio and Indiana portions of the Cincinnati Area, identified by Docket ID No. EPA–R04–OAR–2010–0719, by one of the following methods:

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

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

3. *Fax:* 312–353–6960.

4. *Mail:* Douglas Aburano, Chief, Control Strategies Section, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507.

5. *Hand Delivery:* Douglas Aburano, Chief, Control Strategies Section, U.S.

Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2010–0719. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours 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.

FOR FURTHER INFORMATION CONTACT: In Region 4, Joel Huey or Sara Waterson, 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. Mr. Huey may be reached by telephone at (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov.* Ms. Waterson may be reached by telephone at (404) 562–9061 or via electronic mail at *waterson.sara@epa.gov.* In Region 5, John Summerhays, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. The telephone number is (312) 886–6067. Mr. Summerhays can also be reached via electronic mail at *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What actions is EPA taking?

EPA is proposing to determine that the Cincinnati Area (comprised of Butler, Clermont, Hamilton, and Warren Counties in Ohio; Boone, Campbell and Kenton Counties in Kentucky; and a portion of Dearborn County in Indiana) has attaining data for the 1997 annual $PM_{2.5}$ NAAQS.[1] The proposal is based upon quality assured, quality controlled and certified ambient air monitoring data that show the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS based on the 2007–2009 data. EPA is also proposing to determine, in accordance with EPA's $PM_{2.5}$ Implementation Rule of April 25, 2007 (72 FR 20664), that the Cincinnati Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

II. What is the background for these actions?

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m^3) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour NAAQS of 65 μg/m^3. (This action does not address the 24-hour NAAQS.) *See* 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Cincinnati Area was designated nonattainment for the 1997 $PM_{2.5}$ NAAQS. *See* 40 CFR 81.336 (Ohio), 40 CFR 81.318 (Kentucky), and 40 CFR 81.315 (Indiana).

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m^3 based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour NAAQS of 35 μg/m^3 based on a 3-year average of the 98th percentile of 24-hour concentrations. On November 13, 2009, EPA designated the Cincinnati Area as attainment for the 2006 24-hour NAAQS (74 FR 58688). In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Cincinnati Area was designated as nonattainment for the annual NAAQS but attainment for the 24-hour NAAQS. Thus, this action does not address attainment of either the 1997 or the 2006 24-hour NAAQS.

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

On April 25, 2007 (72 FR 20664), EPA promulgated its $PM_{2.5}$ Implementation Rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 $PM_{2.5}$ NAAQS. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the NAAQS, as discussed below.

III. Does the Cincinnati area meet the annual $PM_{2.5}$ NAAQS?

A. Criteria

This rulemaking is proposing to find that the Cincinnati Area is attaining the annual $PM_{2.5}$ NAAQS, and provides a

[1] "1997 Annual NAAQS" refers to both the primary and secondary standards, which are identical.

basis for that final action. The Cincinnati Area includes certain counties in Ohio, Kentucky, and Indiana. The Cincinnati Area is comprised of Butler, Clermont, Hamilton and Warren Counties in Ohio; Boone, Campbell, and Kenton Counties in Kentucky; and the Lawrenceburg Township portion of Dearborn County in Indiana.

Under EPA regulations at 40 CFR 50.7, the annual primary and secondary $PM_{2.5}$ NAAQS are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 μg/m³ at all relevant monitoring sites in the subject area.

B. Cincinnati Area Air Quality

EPA has reviewed the ambient air monitoring data for the Cincinnati Area in accordance with the provisions of 40 CFR part 50, Appendix N. All data considered have been quality-assured, certified, and recorded in EPA's Air Quality System (AQS) database. This review addresses air quality data collected in the 3-year period from 2007–2009.

The following table provides the annual average concentrations averaged over 2007–2009 at the sites in the Cincinnati Area. There are no $PM_{2.5}$ monitoring sites for the Indiana portion of the Cincinnati Area. The highest 3-year average annual concentration for 2007–2009 on this table is recorded at site 39–061–0014, recording a 3-year average annual concentration of 15.0 μg/m³, which is in attainment of the annual $PM_{2.5}$ NAAQS. All other sites in the Area have 3-year average annual $PM_{2.5}$ concentrations below 15.0 μg/m³.

TABLE 1—ANNUAL AVERAGE CONCENTRATIONS IN THE CINCINNATI AREA

Site name	County	Site No.	Annual average concentration (μg/m³)
Verity HS, Middletown	Butler	39–017–0003	14.0
400 Nilles Rd., Fairfield	Butler	39–017–0016	13.9
2400 Clermont Dr., Batavia	Clermont	39–025–0022	12.3
11590 Grooms Rd., Sycamore	Hamilton	39–061–0006	13.1
Carthage Fire, Seymour/Vine	Hamilton	39–061–0014	15.0
250 Taft Rd., Cincinnati	Hamilton	39–061–0040	13.5
Lower Price Hill, 8th St., Cincinnati	Hamilton	39–061–0042	14.7
2059 Sherman Ave., Norwood	Hamilton	39–061–7001	13.9
300 Murray Rd	Hamilton	39–061–8001	14.6
416 Southeast St	Hamilton	39–165–0007	12.5
NKU	Campbell	21–037–3002	12.5
Covington	Kenton	21–117–0007	12.4

The Cincinnati Area did not meet the 75 percent completeness criteria in three cases. The NKU site began operation on August 1, 2007, and thus did not obtain complete data for the first three quarters of 2007. Nevertheless, the average concentration for the remainder of 2007 and all of 2008 and 2009 is 12.5 μg/m³, which indicates attainment at this site. This would not be considered an incomplete record due to it being a new site. EPA approved the closing of two sites in the 2007–2009 time period, which are not listed in the above table, Scarlet Oaks School (39–061–0043) and Hook Field Airport (39–017–1004). Scarlet Oaks School ended operation December 31, 2008 and Hook Field Airport ended operation December 31, 2007. The Scarlet Oaks School site monitored an average concentration of 14.8 μg/m³ in 2007, and an annual average concentration in 2008 of 13.3 μg/m³. The Hook Field Airport site monitored an annual average concentration of 14.6 μg/m³ for 2007. These values are below the NAAQS. An examination of data from these sites is provided in the February 2011 technical support document available in the docket for this proposed rulemaking.

More generally, EPA believes that the Cincinnati Area has a sufficient network of sites collecting complete data showing attainment to conclude that the Cincinnati Area is now meeting the annual $PM_{2.5}$ NAAQS. In accordance with 40 CFR part 50, Appendix N and standard EPA practice, the review of this data is based on the three most recent years of complete data, generally 2007–2009. Appendix N does not provide for examining partial years of data, because various seasons of the year reflect various influences on $PM_{2.5}$ concentrations, and a partial year's data may not be representative of values that would be determined from a full year's data set. Nevertheless, EPA examined data from 2010. The complete year has not been certified; therefore, the data are not considered complete for 2010. All of the 2008–2010 design values are below the 15.0 μg/m³, except for the Murray Road site in Cincinnati. The Murray Road site has a preliminary 2008–2010 design value of 15.1 μg/m³; however, the site was shut down in February of the first quarter of 2010 due to safety issues. The partial first quarter of 2010 data before the monitor shut down showed the only data above the NAAQS for the 2008–2010 period. The 2008 design value was 14.4 μg/m³ and the 2009 design value was 13.4 μg/m³. Approval was granted for the site to be shut down because the Carthage Fire site registered a higher design value and is located approximately a mile from the Murray Road site. A comparison of the 2007–2009 data showed the sites were well correlated with each other.

The available data for 2010 are consistent with the finding, based on 2007–2009 data, that the Cincinnati Area is attaining the 1997 annual $PM_{2.5}$ NAAQS. On the basis of this review, EPA has preliminarily concluded that this Area has met and continues to meet the 1997 $PM_{2.5}$ NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

C. Has the Cincinnati area met the 1997 annual $PM_{2.5}$ air quality standard?

EPA has reviewed the ambient air monitoring data for $PM_{2.5}$, consistent with the requirements contained in 40 CFR part 50 and recorded the data in the EPA AQS database, for the Cincinnati Area from 2007 through the present time.

On the basis of that review, EPA proposes to determine that this Area has attained and continues to attain the 1997 annual $PM_{2.5}$ NAAQS based on the quality-assured data for the 2007–2009 and 2008–2010 monitoring periods. In

addition, based on EPA's review of the data for 2007–2009, and in accordance with section 179(c)(1) of the CAA and EPA's regulations, EPA proposes to determine that the Area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

IV. What is the effect of these actions?

If this proposed determination of attainment is made final, the requirements for the Cincinnati Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS would be suspended for so long as the Area continues to attain the $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c).

If this proposed rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the Area has violated the annual $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Cincinnati Area, and the Area would thereafter have to address the applicable requirements. *See* 40 CFR 51.1004(c).

Finalizing this proposed action would not constitute a redesignation of the Area to attainment of the annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this proposed action does not involve approving maintenance plans for the Area as required under section 175A of the CAA, nor would it find that the Area has met all other requirements for redesignation. Even if EPA finalizes the proposed action, the designation status of the Cincinnati Area would remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Area.

This action is only a proposed determination of attainment that the Cincinnati Area has attained the 1997 annual $PM_{2.5}$ NAAQS. This action does not address the 24-hour $PM_{2.5}$ NAAQS.

If the Cincinnati Area continues to monitor attainment of the annual $PM_{2.5}$ NAAQS, the requirements for the Cincinnati Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the annual $PM_{2.5}$ NAAQS will remain suspended.

In addition, if EPA's separate and independent proposed determination that the Area has attained the 1997 annual $PM_{2.5}$ standard by its applicable attainment date (April 5, 2010) is finalized, EPA will have met its requirement pursuant to section 179(c)(1) of the CAA to make a determination based on the Area's air quality data as of the attainment date whether the Area attained the standard by that date.

These two actions described above are proposed determinations regarding the Cincinnati Area's attainment status only with respect to the 1997 annual $PM_{2.5}$ NAAQS. Today's actions do not address the 24-hour $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

These actions propose 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, these proposed actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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, these proposed 1997 annual $PM_{2.5}$ NAAQS determinations for the Cincinnati Area do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: April 18, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Dated: May 23, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–13831 Filed 6–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA–R09–OAR–2011–0356; FRL–9314–8]

Revisions to the California State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and Imperial County Air Pollution Control District (ICAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from Motor Vehicle Assembly Coatings, Surface Coatings of Metal Parts and Products, Plastic Parts and Products and Pleasure Crafts, Aerospace Coating Operations and Automotive Refinishing Operations. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by July 5, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0356, by one of the following methods:

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

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

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

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* 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: Adrianne Borgia, EPA Region IX, (415) 972–3576, *borgia.adrianne@epa.gov.*

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

Table of Contents

I. The State's Submittal

A. What rules did the State submit?

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

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD	4602	Motor Vehicle Assembly Coatings	9/17/09	5/17/10
SJVUAPCD	4603	Surface Coating of Metal Parts and Products, Plastic Parts and Products and Pleasure Crafts.	9/17/10	5/17/10
ICAPCD	425	Aerospace Coating Operations	2/23/10	7/20/10
ICAPCD	427	Automotive Refinishing Operations	2/23/10	7/20/10

On 7/8/2010 for the SJUAPCD rules and 8/25/2010 for the ICAPCD rules, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved a version of SJVUAPCD Rule 4602 into the SIP on 6/26/2002. We approved a version of SJVUAPCD Rule 4603 into the SIP on 1/19/2010. We approved a version of ICAPCD Rule 425 into the SIP on 5/19/2005. We approved a version of ICAPCD Rule 427 into the SIP on 10/3/2001.

C. What is the purpose of the submitted rules?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. In general, these rules control the VOC emissions by limiting the VOC of commercial coatings and solvents.

Originally SJVUAPCD Rule 4602 was Motor Vehicle and Mobile Equipment Coating Operations but was retired on January 1, 2009 when Rule 4612, Motor Vehicle and Mobile Equipment Coating Operations—Phase II became effective. SJVUAPCD Rule 4602 is revised to implement RACT requirements as recommended in the CTG for Automobile and the CTG for Light-Duty Truck Assembly Coatings, EPA–453/R–08–006 and Miscellaneous Metal and Plastic Parts Coatings, EPA–453/R–08–003. The rule was also revised to reduce solvent VOC emissions to 25 grams/liter.

SJVUAPCD Rule 4603 is revised to implement RACT requirements as recommended in the CTG for Miscellaneous Metal and Plastic Parts Coatings, EPA–453/R–08–003, for Large Appliance Coatings, EPA–453/R–07–004, and for Metal Furniture Coatings, EPA–453/R–07–005. Rule 4603 now includes plastic parts and products and also includes pleasure crafts. Rule 4603 establishes work practices for large appliance parts and products and metal furniture coating operations. This rule also establishes a 25 gram/liter VOC limit for all cleaning solvents.

ICAPCD Rule 425 is revised to implement the new recordkeeping requirements consistent with other air districts and to comply with the National Emissions Standards for Aerospace Manufacturing and Rework Facilities: Summary of Requirements for Implementing NESHAP, EPA–456/R–97–006.

ICAPCD Rule 427 is revised to implement the California Air Resources Board (CARB) Automotive Coatings Suggested Control Methods (SCM), to add prohibitions regarding sale and ownership of specific coatings and to add requirements for manufacturers and providers of automotive coatings and related materials to provide all necessary information to their clients.

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

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see section 182(a)(2)), and must not relax existing requirements (see sections 110(l) and

193). The SJVUAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rules 4602 and 4603 must fulfill RACT. The ICAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rules 425 and 427 must fulfill RACT.

Guidance and policy documents that we used to help evaluate enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. Issues Relating to "VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

3. "A Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

4. CTG for Automobile and the CTG for Light-Duty Truck Assembly Coatings, EPA–453/R–08–006, Miscellaneous Metal and Plastic Parts Coatings, EPA–453/R–08–003,

5. CTG for Fiberglass Boat Manufacturing Materials, EPA–453/R–08–004,

6. National Emissions Standards for Aerospace Manufacturing and Rework Facilities: Summary of Requirements for Implementing NESHAP, EPA–456/R–97–006 and CARB Automotive Coatings SCM.

B. Do the rules meet the evaluation criteria?

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

C. EPA Recommendations to Further Improve the Rules

The TSDs describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

III. 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, these rules do 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 compound.

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

Dated: May 19, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–13830 Filed 6–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1987–0002; FRL–9315–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Intent To Delete the Coker's Sanitation Service Landfills Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) Region III is issuing an Intent To Delete the Coker's Sanitation Service Landfills Superfund Site (Site) located in Cheswold, Kent County, Delaware, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control (DNREC), have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by July 5, 2011.

ADDRESSES:

Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1987–0002, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail: ostrauskas.darius@epa.gov.*
- *Fax:* (215) 814–3002, Attn: Darius Ostrauskas.

• *Mail:* U.S. Environmental Protection Agency, Region III, Attn: Darius Ostrauskas (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029.

• *Hand Delivery:* U.S. Environmental Protection Agency, Region III, Attn: Darius Ostrauskas (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029, Phone: 215–814–3360, Business Hours: Mon. thru Fri.—9 a.m. to 4 p.m. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1987–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5254, Monday through Friday, 8 a.m. to 5 p.m.

The Dover Public Library, Reference Department, 45 South State Street, Dover, DE 19901, (302) 736–7030, Monday through Thursday, 9 a.m. to 9 p.m., Friday and Saturday, 9 a.m. to 5 p.m., and Sunday, 1 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Darius Ostrauskas, Remedial Project Manager (3HS23), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3360, e-mail: *ostrauskas.darius@epa.gov.*

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Coker's Sanitation Service Landfills Superfund Site without prior Notice of Intent To Delete because EPA views this as a noncontroversial revision and anticipates no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion, which is located in the Rules section of this **Federal Register.**

List of Subjects in 40 CFR Part 300

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

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

Dated: April 29, 2011.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 2011–13844 Filed 6–2–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MB Docket No. 11–93; FCC 11–84]

Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes rules to implement the Commercial Advertisement Loudness Mitigation ("CALM") Act. Among other things, the CALM Act directs the Commission to incorporate into its rules by reference and make mandatory a technical standard developed by an industry standard-setting body that is designed to prevent television commercial advertisements from being transmitted at louder volumes than the program material they accompany. Specifically, the CALM Act requires the Commission to incorporate by reference the ATSC A/85 Recommended Practice ("ATSC A/85 RP") and make it mandatory "insofar as such recommended practice concerns the transmission of commercial advertisements by a television broadcast station, cable operator, or other multichannel video programming distributor." As mandated by the statute, the proposed rules will apply to TV broadcasters, cable operators and other multichannel video programming distributors ("MVPDs"). The new law requires the Commission to adopt the required regulation on or before December 15, 2011, and it will take effect one year after adoption. The document seeks comment below on proposals regarding compliance, waivers, and other implementation issues.

DATES: Comments are due on or before July 5, 2011; reply comments are due on or before July 18, 2011.

ADDRESSES: You may submit comments, identified by MB Docket No. 11–93, by any of the following methods:

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

• *Federal Communications Commission's Electronic Comment Filing System (ECFS) Web Site: http://fjallfoss.fcc.gov/ecfs/.* Follow the instructions for submitting comments.

• *Mail:* All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530; or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the section V. "PROCEDURAL MATTERS" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Evan Baranoff, *Evan.Baranoff@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120 or Shabnam Javid, *Shabnam.Javid@fcc.gov,* of the Engineering Division, Media Bureau at (202) 418–7000.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* (NPRM), FCC 11–84, adopted and released on May 27, 2011. The full text of this document is available electronically via ECFS at *http://fjallfoss.fcc.gov/ecfs/* or may be downloaded at *http://www.fcc.gov/document/implementation-commercial-advertisement-loudness-mitigation-calm-act* or *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-84A1.doc.* (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Notice of Proposed Rulemaking

I. Introduction

1. In this Notice of Proposed Rulemaking ("NPRM"), we propose rules to implement the Commercial Advertisement Loudness Mitigation ("CALM") Act.[1] Among other things, the CALM Act directs the Commission to incorporate into its rules by reference and make mandatory a technical standard developed by an industry standard-setting body that is designed to prevent television commercial advertisements from being transmitted at louder volumes than the program material they accompany.[2] As mandated by the statute, the proposed rules will apply to TV broadcasters, cable operators and other multichannel video programming distributors ("MVPDs").[3] The new law requires the Commission to adopt the required regulation on or before December 15, 2011,[4] and it will take effect one year after adoption.[5] We seek comment below on proposals regarding compliance, waivers, and other implementation issues.

II. Background

2. The CALM Act was enacted into law on December 15, 2010 in response to consumer complaints about loud commercials.[6] The Commission has received complaints about "loud commercials" virtually since the inception of commercial television, more than 50 years ago.[7] Indeed, loud commercials have been a leading source of complaints to the Commission since the FCC Consumer Call Center began reporting the top consumer complaints in 2002.[8] One common complaint is that a commercial is abruptly louder than the adjacent programming.[9] The problem occurs in over-the-air broadcast television programming, as well as in cable, Direct Broadcast Satellite ("DBS") and other video programming.

3. The Commission has not regulated the "loudness" of commercials, primarily because of the difficulty of crafting effective rules "due to the subjective nature" of loudness.[10] The Commission has incorporated by reference into its rules various industry standards on digital television, but these standards do not describe a consistent method for industry to measure and control audio loudness.[11] The loud

[1] The Commercial Advertisement Loudness Mitigation ("CALM") Act, Pub. L. 111–311, 124 Stat. 3294 (2010) (codified at 47 U.S.C. 621). The CALM Act was enacted on December 15, 2010 (S. 2847, 111th Cong.). The relevant legislative history includes the Senate and House Committee Reports to bills S. 2847 and H.R. 1084, respectively, as well as the Senate and House Floor Consideration of these bills. *See* Senate Commerce, Science, and Transportation Committee Report dated Sept. 29, 2010, accompanying Senate Bill, S. 2847, 111th Cong. (2010), S. REP. 111–340 ("*Senate Committee Report to S. 2847*"); House Energy and Commerce Committee Report dated Dec. 14, 2009, accompanying House Bill, H.R. 1084, 111th Cong. (2009), H.R. REP. 111–374 ("*House Committee Report to H.R. 1084*"); Senate Floor Consideration of S. 2847, 156 Cong. Rec. S7763 (daily ed. Sept. 29, 2010) (bill passed) ("*Senate Floor Debate*"); House Floor Consideration of S. 2847, 156 Cong. Rec. H7720 (daily ed. Nov. 30, 2010) ("*House Floor Debate of S. 2847*") and H7899 (daily ed. Dec. 2, 2010) (bill passed); House Floor Consideration of H.R. 1084, 155 Cong. Rec. H14907 (daily ed. Dec. 15, 2009). Note that the Senate and House Committee Reports were prepared before the bill was amended to add Section 2(c) of the CALM Act (the compliance provision). *See Senate Floor Debate* at S7763- S7764 (approving "amendment No. 4687").

[2] *See* ATSC A/85: "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television," (May 25, 2011) ("ATSC A/85 RP"). To obtain a copy of the ATSC A/85 RP, visit the ATSC website: *http://www.atsc.org/cms/standards/a_85-2009.pdf. See also* 47 U.S.C. 621(a); *Senate Committee Report to S. 2847* at 1; *House Committee Report to H.R. 1084* at 1.

[3] We refer herein to covered entities collectively as "stations/MVPDs" or "regulated entities."

[4] *See* 47 U.S.C. 621(a).

[5] *See* 47 U.S.C. 621(b)(1).

[6] *See also House Floor Debate of S. 2847* at H. 7721 (Rep. Eshoo stating that the law is in response to "the complaints that the American people have registered with the FCC over the last 50 years").

[7] *See 1984 Order,* FCC 84–300, 49 FR 28077, July 10, 1984 ("*1984 Order*") (observing in 1984 that "the Commission has received complaints of loud commercials for at least the last 30 years"). *See also* 47 CFR 73.4075; Public Notice, "Statement of Policy Concerning Loud Commercials," 1 FCC 2d 10, para. 20(a) (1965) (unpublished) ("*1965 Policy Statement*") (concluding that "complaints of loud commercials are numerous enough to require corrective action by the industry and regulatory measures by the Commission").

[8] To view the FCC's Quarterly Inquiries and Complaints Reports, visit *http://www.fcc.gov/cgb/quarter/.* According to the FCC Consumer Call Center, since January 2008, the Commission has received 819 complaints and 4,582 inquiries from consumers about "loud commercials."

[9] *See Senate Committee Report to S. 2847* at 1–2. *See also* Public Notice, "Statement of Policy Concerning Loud Commercials," 1 FCC 2d 10, para. 15 (1965) ("*1965 Policy Statement*") (stating that a "common source of complaint is the contrast between loudness of commercials as compared to the volume of preceding program material—*e.g.,* soft music or dialogue immediately followed by a rapid-fire, strident commercial").

[10] *See 1984 Order* at para. 14.

[11] 47 CFR 73.682(d) incorporates by reference and requires compliance with most of the Advanced Television Systems Committee ("ATSC") A/53 Digital Television Standard (2007 version) relating to digital broadcast television and 47 CFR 76.640(b)(1)(iii) incorporates by reference the American National Standards Institute/Society of Cable Telecommunications Engineers ("ANSI/SCTE") Standard 54 (2003 version) relating to digital cable television. The rules do not currently incorporate by reference a standard that applies to satellite TV ("DBS") providers. Part 5 of the ATSC Standard A/53, which includes the Dolby AC–3 DTV audio standard, has recently been updated by ATSC. In our *Video Description NPRM,* we propose to update our DTV transmission standard in Section 73.682(d) of our rules to incorporate by reference the 2010 version of Part 5 of the ATSC A/53 Digital Television Standard (relating to audio systems). *See Video Description NPRM,* FCC 11–36, 76 FR 14856, March 18, 2011 ("*Video Description NPRM*"). *See also* ATSC A/53, Part 5: 2010 "ATSC Digital Television Standard, Part 5—AC–3 Audio System Characteristics" (July 6, 2010) ("2010 ATSC A/53 Standard, Part 5"). We note that this proposal is consistent with our proposed rules herein because the ATSC A/85 RP references and requires compliance with the same testing methodology adopted in the 2010 ATSC A/53 Standard, Part 5. *See, e.g.,* ATSC A/85 RP §§ 2.1 at 9 (referencing A/

Continued

commercial problem seems to have been exacerbated by the transition to digital television. DTV's expanded aural dynamic range allows for greater variations in loudness for cinema-like sound quality. As a result, when content providers and/or stations/MVPDs do not properly manage DTV loudness, the resulting wide variations in loudness are more noticeable to consumers.[12] However, DTV technology also offers industry the opportunity to more easily manage loudness.

4. The television broadcast industry has recognized the importance of measuring and controlling volume in television programming, particularly in the context of the transition to digital television. In November 2009, the Advanced Television Systems Committee ("ATSC") [13] completed and published its A/85 Recommended Practice ("ATSC A/85 RP"),[14] which was developed to offer guidance to the TV industry—from content creators to distributors to consumers—about DTV audio loudness management.[15] On May 25, 2011, the ATSC approved a successor document to the A/85 RP, which, among other things, adds an Annex J concerning "the courses of action necessary to perform effective loudness control of digital television commercial advertising." [16] Although the ATSC A/85 RP, like most ATSC documents, was primarily intended for over-the-air TV broadcasters, the ATSC A/85 RP also offers guidance to cable and DBS operators, and other MVPDs to the extent that they use the AC–3 digital audio system [17] when they transmit digital programming content, including commercial advertisements, to consumers.[18] The ATSC A/85 RP adopts the International Telecommunication Union [19] Radiocommunication Sector ("ITU–R") [20] Recommendation BS.1770 measurement algorithm as the loudness measurement standard [21] and sets forth various techniques for industry to manage and control the audio loudness of digital programming content as it flows down the production stream.[22] The ITU–R BS.1770 measurement algorithm provides a numerical value that indicates the perceived loudness of the content.[23] That numerical value is encoded in the audio content by the content provider or station/MVPD as a metadata parameter called "dialnorm." [24] Stations/MVPDs transmit the "dialnorm" to the consumer's reception equipment along with the programming to direct the consumer's equipment to manage and control the loudness of the programming.[25] The "golden rule" of the ATSC A/85 RP is that the dialnorm value must correctly identify the perceived loudness of the content it accompanies in order to prevent loudness variation during content transitions on a channel (*e.g.,* TV program to commercial) or when changing channels.[26] If the "dialnorm"

53) and 7.1 at 17 (stating that the ATSC A/85 RP "identifies methods to ensure consistent digital television loudness through the proper use of dialnorm metadata for all content, and thus comply with A/53"). The previous version of the ATSC A/53 Standard, Part 5, which is incorporated by reference in Section 73.682(d), includes an outdated audio loudness measurement method. *See* ATSC A/53, Part 5: 2007 "ATSC Digital Television Standard, Part 5—AC–3 Audio System Characteristics" § 5.5 at 9 (Dialogue Level) (Jan. 3, 2007) ("2007 ATSC A/53 Standard, Part 5"). The 2010 ATSC A/53 Standard, Part 5, contains the new methods to measure and control audio loudness, reflected in the ATSC A/85 RP. *See* 2010 ATSC A/53 Standard, Part 5 at § 2.1 at 5 (referencing A/85) and § 5.5 at 9 (Dialogue Level). We anticipate that the Video Description proceeding, MB Docket No. 11–43, will be completed before we adopt the regulation required by the CALM Act. *See Video Description NPRM,* para. 5, n.14 (the Communications and Video Accessibility Act requires reinstatement of the video description rules one year after the date of its enactment, which occurred on October 8, 2010).

[12] *See* ATSC Letter by Mark Richer, ATSC President, and attached "Executive Summary of the ATSC DTV Loudness Tutorial Presented on February 1, 2011" (dated Apr. 8, 2011) ("*ATSC Letter* and *DTV Loudness Tutorial Summary*") (stating "[t]he ATSC AC–3 Digital Television Audio System has 32 times the perceived dynamic range (ratio of soft to loud sounds) than the previous NTSC analog audio system. Although this increase in dynamic range makes cinema-like sound a reality for DTV, greater loudness variation is now an unintentional consequence when loudness is not managed correctly").

[13] ATSC is an international, non-profit organization developing voluntary standards for digital television. The ATSC member organizations represent the broadcast, broadcast equipment, motion picture, consumer electronics, computer, cable, satellite, and semiconductor industries. ATSC creates and fosters implementation of voluntary Standards and Recommended Practices to advance digital television broadcasting and to facilitate interoperability with other media. *See http://www.atsc.org/aboutatsc.html.*

[14] *See* ATSC A/85: "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television," (Nov. 4, 2009).

[15] *See* ATSC A/85 RP § 1 at 7. A key goal of the ATSC A/85 RP was to develop a system that would enable industry to control the variations in loudness of digital programming, while retaining the improved sound quality and dynamic range of such programming. *Id.*

[16] ATSC A/85 RP Annex J.

[17] AC–3 is one method of formatting and encoding digital multi-channel audio, used by TV broadcast stations and many traditional cable operators. The AC–3 audio system is defined in the ATSC Digital Audio Compression Standard (A/52B), which is incorporated into the ATSC Digital Television Standard (A/53). *See* ATSC A/52B: "Digital Audio Compression (AC–3, E–AC–3) Standard, Revision B" (June 14, 2005). The ATSC A/85 RP provides methods for establishing and maintaining audio loudness using Dialog Normalization (dialnorm) metadata, a parameter unique to the AC–3 audio system. *See, e.g.,* ATSC A/85 RP § 4 at 13.

[18] *See, e.g.,* ATSC A/85 RP Annex H at 61. As discussed *infra,* the ATSC A/85 RP provides some guidance for handling content without metadata, including non-AC–3 audio content; but the A/85 RP contemplates encoding all content into AC–3 and setting dialnorm appropriately.

[19] The International Telecommunication Union ("ITU") is a specialized agency of the United Nations whose goal is to promote international cooperation in the efficient use of telecommunications, including the use of the radio frequency spectrum. The ITU publishes technical recommendations concerning various aspects of radiocommunication technology. These recommendations are subject to an international peer review and approval process in which the Commission participates.

[20] The ITU Radiocommunication Sector ("ITU–R") plays a vital role in the global management of the radio-frequency spectrum and satellite orbits—limited natural resources which are increasingly in demand from a large and growing number of services such as fixed, mobile, broadcasting, amateur, space research, emergency telecommunications, meteorology, global positioning systems, environmental monitoring and communication services—that ensure safety of life on land, at sea and in the skies.

[21] The internationally accepted ITU–R BS.1770 measurement algorithm, presented in units of loudness K-weighted, relative to full scale ("LKFS"), was developed to give industry professionals a contemporary and accurate tool to measure loudness by modeling the human hearing system. ITU is currently considering improvements to its recommendation. *See* ITU Press Release, titled "Sound advice from ITU to keep TV volume in check; ITU Recommendation to control volume variations in TV programming" at *http://www.itu.int/newsroom/press_releases/2010/03.html* (dated Jan. 18, 2010).

[22] *See* ATSC A/85 RP § 7.1 at 17 (the ATSC A/85 RP "identifies methods to ensure consistent digital television loudness through the proper use of dialnorm metadata for all content").

[23] *See* ATSC A/85 RP § 3.4 at 12 (defining ITU–R BS.1770). "Loudness" is a subjective measure based on human perception of sound waves that can be difficult to quantify and thus to measure. The ITU utilized very extensive human testing to produce an algorithm which provides a good approximation of human loudness perception of program audio to measure the loudness of programs. "Volume," in contrast to loudness, is an objective measure based on the amplitude of sound waves. *See* ATSC A/85 RP § 3.4 at 13 (defining loudness as "[a] perceptual quantity; the magnitude of the physiological effect produced when a sound stimulates the ear").

[24] Metadata or "data about the (audio) data" is instructional information that is transmitted to the home (separately, but in the same bit stream) along with the digital audio content it describes. *See* ATSC A/85 RP § 1.1 at 7. The dialnorm and other metadata parameters are integral to the AC–3 audio bit stream. *Id.* at 8. The dialnorm value identifies the average measured loudness of the content.

[25] From the consumer's perspective, the dialnorm metadata parameter defines the volume level the sound needs to be reproduced so that the consumer will end up with a uniform volume level across programs and commercials without a need to adjust it again. *See* ATSC A/85 RP at 7. *See also ATSC DTV Loudness Tutorial Summary* at 1 ("When content is measured with the ITU–R BS.1770 measurement algorithm and dialnorm metadata is transmitted that correctly identifies the loudness of the content it accompanies, the ATSC AC-audio system presents DTV sound capable of cinema's range but without loudness variations that a viewer may find annoying.").

[26] *See ATSC DTV Loudness Tutorial Summary* at 1 ("An essential requirement (the golden rule) for management of loudness in an ATSC audio system is to ensure that the average content loudness in

parameter is present and set correctly, the AC–3 audio decoder in the consumer's home receiver will automatically adjust the volume to eliminate spikes in loudness at these transitions. The ATSC A/85 RP also clarifies that the ATSC A/53 DTV Transmission Standard requires that the dialnorm value be encoded accurately and carried with the audio content and assumes compliance with this technical requirement.[27] If all stations/MVPDs measure content with the ITU–R BS.1770 measurement algorithm and transmit dialnorm metadata that correctly identifies the loudness of the content it accompanies, then consumers will be able to set their volume controls to their preferred listening (loudness) level and will not have to adjust the volume between programs and commercials.[28]

5. Following Congress's adoption of the CALM Act, Commission staff held informal meetings with industry representatives for preliminary information gathering purposes and to obtain technical guidance on how the various industry segments currently manage audio loudness and how they intend to comply with the required regulation.[29] In these meetings, industry representatives described certain challenges they may face with complying with the required regulation. For example, industry representatives explained that some MVPDs do not exclusively use the AC–3 audio system on which the ATSC RP A/85 is based. Also, industry representatives explained that some stations/MVPDs may face challenges with respect to the content which they do not create or insert into the program stream. We address these issues in the discussion section that follows.

6. The statutory text of the CALM Act provides in relevant part as follows: [30]

(2) (a) Rulemaking required. Within 1 year after the date of enactment of this Act, the Federal Communications Commission shall prescribe pursuant to the Communications Act of 1934 (47 U.S.C. 151 *et seq.*) a regulation that is limited to incorporating by reference and making mandatory (subject to any waivers the Commission may grant) the "Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television" (A/85), and any successor thereto, approved by the Advanced Television Systems Committee, only insofar as such recommended practice concerns the transmission of commercial advertisements by a television broadcast station, cable operator, or other multichannel video programming distributor.[31]

(b) Implementation

(1) Effective Date. The Federal Communications Commission shall prescribe that the regulation adopted pursuant to subsection (a) shall become effective 1 year after the date of its adoption.[32]

(2) Waiver. For any television broadcast station, cable operator, or other multichannel video programming distributor that demonstrates that obtaining the equipment to comply with the regulation adopted pursuant to subsection (a) would result in financial hardship, the Federal Communications Commission may grant a waiver of the effective date set forth in paragraph (1) for 1 year and may renew such waiver for 1 additional year.[33]

(3) Waiver Authority. Nothing in this section affects the Commission's authority under section 1.3 of its rules (47 CFR 1.3) to waive any rule required by this Act, or the application of any such rule, for good cause shown to a television broadcast station, cable operator, or other multichannel video programming distributor, or to a class of such stations, operators, or distributors.[34]

(c) Compliance. Any broadcast television operator, cable operator, or other multichannel video programming distributor that installs, utilizes, and maintains in a commercially reasonable manner the equipment and associated software in compliance with the regulations issued by the Federal Communications Commission in accordance with subsection (a) shall be deemed to be in compliance with such regulations.[35]

(d) Definitions. For purposes of this section—

(1) The term "television broadcast station" has the meaning given such term in section 325 of the Communications Act of 1934 (47 U.S.C. 325); [36] and

(2) The terms "cable operator" and "multichannel video programming distributor" have the meanings given such terms in section 602 of Communications Act of 1934 (47 U.S.C. 522).[37]

III. Discussion

7. In this discussion, we consider the scope of the CALM Act and identify the entities responsible under the law for preventing the transmission of loud commercials. Next, we address how stations/MVPDs can demonstrate compliance with the ATSC A/85 RP pursuant to the provisions of the CALM Act and propose a consumer-driven complaint process to enforce regulations mandated by the Act. We also seek information and comment on challenges for stations/MVPDs in complying with the statute and approaches that will enable them to comply consistent with their statutory responsibilities. Finally, we consider how to implement the waiver provisions in the statute.

A. Section 2(a) and Scope

8. We begin by addressing Section 2(a) and the scope of the CALM Act. As indicated above, Section 2(a) directs the Commission to "prescribe * * * a regulation that is limited to incorporating by reference and making mandatory" the ATSC A/85 RP.[38] This language not only requires us to incorporate by reference and make mandatory the ATSC A/85 RP, but it expressly limits our authority in that regard. Therefore, we tentatively conclude that the Commission may not modify the technical standard or adopt other actions inconsistent with the statute's express limitations. Accordingly, we propose to incorporate by reference the ATSC A/85 RP into our rules.[39]

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units of LKFS matches the metadata's dialnorm value in the AC–3 bit stream. If these two values do not match, the metadata cannot correctly ensure that the consumer's DTV sound level is consistently reproduced"). *See also* ATSC A/85 RP § 5.2 at 15.

[27] *See* ATSC A/85 RP § 7.1 at 17 ("Carriage of and correct setting of the value of dialnorm is mandatory"); ATSC A/85 RP Annex J at § J.3.

[28] *See* ATSC A/85 RP § 4 at 13. If the ATSC A/85 RP is applied to all channels, the loudness will also be consistent across channels. *Id.* We note that the AC–3 audio system does not intend to eliminate all loudness variations, but only prevent loudness variations during content transitions. Indeed, the AC–3 audio system increases the dynamic range to provide consumers with cinema-like sound quality. *See ATSC DTV Loudness Tutorial Summary* at 1.

[29] *See* Appendix: List of Participants. These informal meetings occurred prior to commencement of this proceeding and are not subject to the *ex parte* requirements. These meetings do not supplant official comments in this proceeding.

[30] *See* 47 U.S.C. 621 (2010). *See also* 47 U.S.C. 609 (2010).

[31] *Id.* 621(a).

[32] *Id.* 621(b)(1).

[33] *Id.* 621(b)(2).

[34] *Id.* 621(b)(3).

[35] *Id.* 621(c).

[36] *Id.* 621(d)(1). Section 325 of the Communications Act defines the term "television broadcast station" as "an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station." 47 U.S.C. 325(b)(7)(B).

[37] *Id.* 621(d)(2). Section 602 of Communications Act defines the term "cable operator" as "any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system." 47 U.S.C. 522(5). Section 602 of Communications Act defines the term "multichannel video programming distributor" as "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming." 47 U.S.C. 522(13).

[38] *See* 47 U.S.C. 621(a).

[39] *See* proposed rules 47 CFR 73.682(e) and 76.607. As required by the Office of the Federal Register ("OFR"), we will obtain approval from the Director of the Federal Register to incorporate by reference the ATSC A/85 RP into our rules. *See* 5 U.S.C. 552(a); 1 CFR 51.3; and generally 1 CFR part 51 (Incorporation by Reference). We note that the ATSC A/85 RP will be incorporated into our rules as it exists on the date it is approved by the OFR for incorporation by reference. We will incorporate future versions of the ATSC A/85 RP as they

Continued

9. Section 2(a) further mandates that the Commission incorporate by reference and make mandatory the ATSC A/85 RP "only insofar as [it] concerns the transmission of commercial advertisements. * * *"[40] We seek comment on whether and how to identify the portions of the ATSC A/85 RP "concern[ing] the transmission of commercial advertisements" for purposes of the statute.[41] We note that the ATSC recently approved a successor document to the A/85 RP which, among other things, adds an Annex J, titled "Requirements for Establishing and Maintaining Audio Loudness of Commercial Advertising in Digital Television," addressing "the courses of action necessary to perform effective loudness control of digital television commercial advertising."[42] We invite comment on the successor document and on the significance of Annex J.

10. We also interpret the statutory language "the transmission of commercial advertisements" to apply to all such transmissions by stations/MVPDs. In our informal meetings, some industry representatives noted that in some circumstances stations/MVPDs do not create or insert all the commercials that they ultimately transmit to consumers. They further asserted that the rules the Commission will adopt to implement the CALM Act should limit a station/MVPD's responsibility to commercials that the station/MVPD itself "inserts" into the programming stream and not apply to all commercials a station/MVPD transmits to the consumer. We believe such an approach and limitation would be inconsistent with the statutory language, the purpose of the CALM Act, the legislative history, and ATSC A/85 RP. The statute expressly applies to commercials transmitted by a station/MVPD and makes no exception for commercials not inserted by the station/MVPD. Nothing in the statutory language or legislative history distinguishes between different sources of commercial content or suggests any intent to limit a station/MVPD's responsibility only to those commercials "inserted" by it. Nor does the ATSC A/85 RP make such a distinction.[43] To the contrary, the legislative history underscores that the purpose of the statute is to address consumers' experiences with loud commercials, and the statute imposes responsibility for addressing the problem on the station/MVPD.[44] Limiting regulations to only certain commercials would undermine the statute's purpose. As a practical matter, consumers neither know nor care which entity inserts commercials into the programming stream. Therefore, we tentatively conclude that "transmission of commercial advertisements" means transmission of all commercials, and therefore that stations/MVPDs are responsible for all commercials "transmitted" by them, including commercials inserted by stations/MVPDs, as well as those commercials that are in the programming that stations/MVPDs receive from content providers and transmit (or retransmit) to viewers. We believe this interpretation is required by the express language of the statute, but we invite commenters to address this analysis. We also seek specific information from stations and MVPDs on the percentage of the commercials they transmit to consumers that is inserted by the station/MVPD itself, as compared to the percentage of commercials that is part of programming from a content provider (*e.g.,* from a network or cable programmer).

11. Section 2(a) applies to "commercial advertisements," but does not define this term for purposes of the statute.[45] Nor does the legislative history address the definition of "commercial advertisements." We seek comment on how to define this term for purposes of the CALM Act.[46] For example, does the term "commercial advertisements" include political advertising, including uses by legally qualified candidates?[47] Does the term "commercial advertisements" apply to promotions of television or cable/MVPD programs? We anticipate that noncommercial broadcast stations will largely not be affected by this proceeding, because Section 399B of the Communications Act, as amended, prohibits them from broadcasting "advertisements."[48] In 2001, however, the Commission concluded that the prohibition in Section 399B does not apply to nonbroadcast services provided by noncommercial stations, such as subscription services provided on their DTV channels.[49] We seek comment on whether the CALM Act applies to noncommercial stations to the extent they transmit advertisements on nonbroadcast streams and, if so, whether this raises any issues unique to the noncommercial service. We note that the definition of a "television broadcast station" used by the CALM Act includes both a commercial and noncommercial television broadcast station.

12. Section 2(a) expressly applies to each "television broadcast station, cable operator, or other multichannel video programming distributor." The CALM Act incorporates definitions of these terms contained in the Communications Act.[50] In our informal meetings, some industry representatives explained that not all MVPDs use the AC–3 audio systems on which the ATSC A/85 RP is based for all content.[51] Therefore, they asserted that, to the extent that an MVPD does not use AC–3 audio technology, the statute should not apply to them. The statute, however, expressly applies to all stations/MVPDs regardless of the audio system they currently use. Nothing in the statutory language or legislative history suggests an intent to make an exception for MVPDs that do not use AC–3 audio systems. The purpose of the statute is to address the problem of loud commercials for all TV consumers, not just those served by stations/MVPDs that use a particular audio system. Not only would limiting the statute's scope to stations/MVPDs

become available and will publish notice of updates to this incorporation by reference in the **Federal Register.**

[40] *See* 47 U.S.C. 621(a).

[41] We note that, under the CALM Act, each regulated entity is responsible for determining how to use the ATSC A/85 RP to ensure that its viewers receive commercials and programming at a consistent loudness. *See, e.g.,* ATSC A/85 RP § 8 (describing effective solutions for managing variations in loudness during program-to-interstitial transitions); ATSC A/85 RP Annex J § J.2.

[42] ATSC A/85 RP Annex J § J.1.

[43] *See* ATSC A/85 RP § 8 at 23. ("Methods to effectively control program-to-interstitial loudness"). *See also* ATSC A/85 RP § 8.4 at 24–25 ("TV Station and MVPD local ad insertion").

[44] *See House Floor Debate of S. 2847* at H7720 (Rep. Eshoo stating that the bill would "eliminate the earsplitting levels of television advertisements and return control of television sound modulation to the American consumer"); *Senate Committee Report to S. 2847* at 1 (stating purpose of law).

[45] We note that Section 399B of the Communications Act defines the term "advertisement" as "any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended—(1) to promote any service, facility, or product offered by any person who is engaged in such offering for profit; (2) to express the views of any person with respect to any matter of public importance or interest; or (3) to support or oppose any candidate for political office." *See* 47 U.S.C. 399b(a).

[46] We note that, in the context of commercial limits during children's programming, the Commission defines "commercial matter" as "airtime sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's or other age-appropriate programming appearing on the same channel or promotions for children's educational and informational programming on any channel." *See* 47 CFR 73.670 Note 1; 47 CFR 76.225 Note 1.

[47] *See* 47 U.S.C. 315.

[48] 47 U.S.C. 399b.

[49] *See* Report and Order, FCC 01–306, 66 FR 58973, November 26, 2001.

[50] 47 U.S.C. 621(d).

[51] We note that broadcast TV stations are required to use AC–3 audio systems by Section 73.682 of our rules, which incorporates by reference the ATSC A/53 Standard.

that use AC–3 audio systems be inconsistent with the express language of the statute, we think such a reading would undermine the statute's purpose. Therefore, we tentatively conclude that the CALM Act defines the scope and application of the new technical loudness standard as mandatory for all stations/MVPDs and not only those using AC–3 audio systems. We believe this interpretation is required by the express language of the statute, but we invite commenters to address this analysis. In addition, we seek comment below on whether and how MVPDs that do not use AC–3 audio systems can comply with the CALM Act.[52] We note that ATSC is considering amending the ATSC A/85 RP to address how an MVPD that does not exclusively use an AC–3 audio system can follow the ATSC A/85 RP.[53]

13. Finally, Section 2(a) mandates that the required regulation be prescribed "[w]ithin 1 year after the date of the enactment of this Act" and incorporate by reference and make mandatory "any successor" to the ATSC A/85 RP.[54] Because the statute requires the Commission to incorporate successors to the ATSC A/85 RP, and affords the Commission no discretion in this regard, we tentatively conclude that no notice and comment will be necessary to incorporate successor documents into our rules.[55] In accordance with this statutory directive and consistent with the requirements of the Office of the **Federal Register**, we tentatively conclude that any successors to the ATSC A/85 RP will take effect when the Commission has obtained approval from the Director of the Federal Register to incorporate by reference such successors into our rules and publishes a technical amendment in the **Federal Register** to codify the successors into the Commission's rules.[56] If the ATSC adopts a successor to the ATSC A/85 RP before we issue a Report and Order in this proceeding, we tentatively conclude that we will incorporate by reference into our rules the successor standard adopted by ATSC. We ask that the ATSC notify us whenever it approves a successor to the ATSC A/85 RP, and submit a copy of it into the record of this proceeding.[57] We direct the Media Bureau to issue a public notice announcing the ATSC's approval of any successor to the ATSC A/85 RP. We seek comment on our tentative conclusions.

B. Compliance and Enforcement

14. As established above, each station/MVPD is responsible for complying with the CALM Act. In this section, we address how stations/MVPDs can demonstrate compliance with the statute. Specifically, we believe that a station/MVPD can demonstrate compliance with the statute by showing that it has satisfied the safe harbor requirements set out in Section 2(c) of the CALM Act, as described in detail below, or by proving through other means that any commercials that are the subject of a complaint meet the standards of the statute. We also address stations/MVPDs that seek to ensure that the commercials they transmit to viewers comply with the ATSC A/85 RP through contracts with their content providers. We recognize that there may be alternative means of complying and demonstrating compliance with the regulations required by the CALM Act, and we intend to take into consideration challenges that stations/MVPDs may face in complying with the ATSC A/85 RP, and how those challenges may vary depending upon the technology the entity uses, as well as its size and market power.

15. We note that the ATSC A/85 RP identifies several options for actions that stations/MVPDs may take to control and manage loudness.[58] Under the ATSC A/85 RP, stations/MVPDs can control and manage loudness either by (1) using one or more types of equipment, such as a loudness measurement device and/or software, a file based scaling device, or a real time loudness processing device; or (2) ensuring that their content suppliers deliver the content to them in accordance with their loudness specification (*e.g.,* a fixed "target" loudness value or the correct dialnorm value).[59] In the latter case, a station/MVPD may be able to comply with the ATSC A/85 RP without having equipment capable of managing audio loudness on its premises because the ATSC A/85 RP recognizes that the adjustments and/or loudness calculations for setting the correct dialnorm value may be performed during production or post-production or otherwise upstream of the station/MVPD. The statute, however, makes the station/MVPD responsible for ensuring that such adjustments and/or calculations have been performed on the content transmitted to its viewers/subscribers, particularly because the ATSC A/85 requires the station/MVPD to ensure the dialnorm is set correctly.[60] We seek to adopt rules that achieve the goals of the statute, are easy to enforce and, at the same time, pose minimal administrative burdens. Therefore, as explained below, we also propose a consumer complaint procedure that enables consumers to file complaints with the Commission and permits stations/MVPDs to demonstrate compliance in response to those complaints in a straightforward manner.

1. Section 2(c) "Safe Harbor"

16. Section 2(c) expressly provides that a station/MVPD will be "deemed to be in compliance" with our rules implementing the CALM Act[61] if such entity "installs, utilizes, and maintains in a commercially reasonable manner the equipment and associated software" necessary to comply with the ATSC A/85 RP.[62] The legislative history indicates an intent for this provision to be construed as a "safe harbor" for stations/MVPDs that obtain and use the necessary equipment.[63] Consistent with Section 2(c)'s language and history, we propose to interpret this provision to require the Commission to accept showings that a regulated entity has satisfied Section 2(c)'s requirements as demonstrating compliance, but not to restrict regulated entities to such showings as the only means of demonstrating compliance. We tentatively conclude that the Section 2(c) safe harbor provision requires that a station/MVPD must, itself, install, utilize, and maintain the necessary equipment, based on our reading of the statutory language and associated

[52] *See infra* discussion considering compliance by stations/MVPDs that face practical challenges, such as the use of non-AC–3 audio systems.

[53] *See ATSC Letter* ("ATSC has also started work on the development of a new "Annex K" that addresses loudness management for commercial advertising when using non-AC–3 audio systems.").

[54] 47 U.S.C. 621(a).

[55] *See* 5 U.S.C. 552(b)(B) (providing that Administrate Procedure Act's notice and comment requirements do not apply when the agency for good cause finds, and incorporates the finding and a brief statement of reasons therefor in the rules issued, that notice and public procedure thereon are unnecessary).

[56] *See* 5 U.S.C. 552(a); 1 CFR 51.3; and *generally* 1 CFR part 51.

[57] We request that the ATSC also send a courtesy copy of the notice to the Chief Engineer of the Media Bureau.

[58] *See* ATSC A/85 RP § 8.1. *See also* ATSC DTV Loudness Tutorial Summary at 2–3.

[59] *See id.*

[60] As noted, *supra,* "Section 2(a) expressly applies to each 'television broadcast station, cable operator, or other multichannel video programming distributor.'" *See also* ATSC A/85 RP § 8.1 at 23.

[61] *See* 47 U.S.C. 621(c) and proposed rules 47 CFR 73.682(e) and 76.607.

[62] *See* 47 U.S.C. 621(c) (which describes when a station "shall be deemed in compliance with [our rules]").

[63] *See House Floor Debate of S. 2847* at H7720 (Rep. Terry describing this provision as "a kind of 'safe harbor' by deeming an operator that installs, utilizes and maintains the appropriate equipment and software in compliance with the [CALM Act]").

definitions.[64] That is, we believe that Section 2(c) contemplates action by the television broadcast station[65] and the MVPD itself, and not action by a third party, such as a network with which the station is affiliated or a programmer providing content to the MVPD. We seek comment on this tentative conclusion and on whether there are any circumstances in which a station/MVPD could satisfy the safe harbor parameters by utilizing a third party that has the necessary equipment, rather than installing the equipment itself. For example, would it be consistent with the statutory language for a station to demonstrate Section 2(c) safe harbor compliance by showing that the network with which it is affiliated installed, utilized, and maintained the necessary equipment in a commercially reasonable manner? Is there any relevant distinction in this regard between a network providing content to an affiliate and a programmer providing content to an MVPD?

17. In our informal meetings with industry, MVPD representatives indicated that they can use equipment to ensure compliance with A/85 for a commercial they insert into a channel, but not for a commercial contained in a block of programming they receive from a content provider. We believe, in this situation, the MVPD may be able to rely on the safe harbor with respect to the commercial it inserts into the programming stream, but not with respect to the commercials for which it does not utilize the equipment. In this situation, the MVPD would be required to use an alternative method of loudness control,[66] and could not rely on the safe harbor in response to a complaint. We seek comment on the situations in which a station/MVPD would be able to satisfy the safe harbor provision with respect to some, but not all, of the commercials it transmits to consumers.

18. Below, we propose the interpretations for each of the statutory terms in Section 2(c) and seek comment on these interpretations. We also seek comment on what "commercially reasonable" means in this context. Does the term "commercially reasonable" mean consistent with industry practice? Does it imply consideration of individual circumstances?

19. *Installation.* We propose to interpret installation of equipment in a commercially reasonable manner to mean that a station/MVPD has obtained and readied for use in its video distribution system equipment that conforms with the ATSC A/85 RP to control loudness of commercials transmitted to consumers.[67] The solutions set out in ATSC A/85 RP may rely on loudness measurement devices and/or software, file based scaling devices, or real time loudness processing devices depending on the method chosen to control loudness.[68] Loudness measurement devices and/or software must be able to measure loudness using the ITU–R BS.1770 measurement algorithm and support the use of dialnorm metadata.[69] We seek comment on our proposed interpretation and on how to determine whether particular equipment conforms to ITU–R BS.1770 as required in the ATSC A/85 RP. We recognize that stations/MVPDs may want regulatory certainty that the equipment they may purchase (or have already purchased) will enable them to comply with the ATSC A/85 RP (and, thus, the statute).[70] However, we do not propose to require equipment authorization through an equipment performance verification procedure or to establish an administratively burdensome or time-consuming process for determining compliance based on satisfying the installation requirement.[71] We invite comment on what measures we should require stations/MVPDs to take to ensure that they have installed the correct equipment to enable them to take advantage of the safe harbor provided for in Section 2(c) of the CALM Act.

20. *Utilization.* We propose to interpret utilization of equipment in a commercially reasonable manner to mean that a station/MVPD operates the equipment in conformance with the ATSC A/85 RP to ensure that commercials are transmitted to consumers at a loudness level that is consistent with the programming the commercials accompany.[72] As discussed, the key goal of the ATSC A/85 RP and the statute is to prevent the transmission of loud commercials to consumers.[73] Consistent with that goal, we propose to interpret the term utilization in Section 2(c) to mean that, in order to satisfy the safe harbor provision, mechanisms must be in place to properly measure the loudness of the content for which the safe harbor is claimed and ensure that dialnorm metadata is encoded correctly before transmitting the content to the consumer. We seek comment on this interpretation and on the utilization that is necessary to perform these functions. We also seek comment on how stations/MVPDs that seek to rely on the safe harbor in response to a complaint may demonstrate utilization of the required equipment with regard to the programming in question.

21. *Maintenance.* We propose to interpret maintenance of equipment in a commercially reasonable manner to mean that a station/MVPD performs routine maintenance on the equipment at issue to ensure that it continues to function in a manner that prevents the transmission of loud commercials to consumers and timely repairs equipment when it malfunctions.[74] Accordingly, we believe maintenance in a "commercially reasonable manner" requires a station/MVPD to routinely perform quality control tests, such as spot checks to ensure that their equipment is properly detecting inappropriate loudness and to take swift corrective action to the extent problems are detected. We seek comment on this interpretation. We also invite comment on what, if any, other quality control measures should be required in order for stations/MVPDs to take advantage of

[64] We also consider, *infra,* use of contractual arrangements through which a station/MVPD would require that content be delivered to it by a content provider in conformance with the ATSC A/85 RP. *See, e.g.,* ATSC A/85 RP § 7.3.2 at 18 (stating that "[a] content delivery specification should specify the Target Loudness for all content").

[65] We note that Section 2(a) refers to a "television broadcast station" and Section 2(c) refers to a "broadcast television operator." *See* 47 U.S.C. 621(a) and (c). We seek comment on the significance, if any, of the use of these different terms.

[66] *See infra* discussion of Other Ways to Demonstrate Compliance.

[67] *See* ATSC A/85 RP § 8 at 23.

[68] *See* ATSC A/85 RP § 8 at 23.

[69] *See* ATSC A/85 RP § 3.3 at 13 (defining "measured loudness") and ATSC A/85 RP § 5.1 at 14.

[70] Based on industry sources, Congress estimated that the cost of equipment that controls the volume of programming ranges from a few thousand dollars to about $20,000 per device, depending on the method used to comply with the mandate. *Senate Committee Report to S. 2847* at 3.

[71] We note that our existing equipment authorization procedures would be inappropriate here because they are generally used to ensure compliance with RF safety or interference issues, neither of which is relevant to demonstrating compliance with the CALM Act. *See, e.g.,* 47 CFR 2.902 (verification) and § 2.907 (certification).

[72] *See, e.g.,* ATSC A/85 RP Annex H at 61 (stating "[g]oal is to present to the viewer consistent audio loudness across commercials, programs, and channel changes"). *See also, e.g., House Floor Debate of S. 2847* at H7720 (Rep. Eshoo stating that the bill would "make the volume of commercials and regular programming uniform so consumers can control sound levels."); *Senate Committee Report to S. 2847* at 1 (stating Congress' expectation that the ATSC A/85 RP will "moderat[e] the loudness of commercials in comparison to accompanying video programming"); *House Committee Report to H.R. 1084* at 1 (stating goal of statute is "to preclude commercials from being broadcast at louder volumes than the program material they accompany").

[73] *Id.*

[74] *See Senate Committee Report to S. 2847* at 4 ("the Committee expects that stations and MVPDs will use commercially reasonable efforts to maintain equipment and to repair or replace malfunctioning equipment").

the CALM Act's safe harbor provision. Do stations/MVPDs, in the ordinary course of doing business, maintain records about the routine maintenance of equipment on which they should be able to rely to be deemed in compliance with this element of the statute? Also, how much time is commercially reasonable for repairing malfunctioning equipment?

2. Other Ways To Demonstrate Compliance

22. While stations/MVPDs shall be "deemed" in compliance if they show that they have installed, utilized and maintained equipment in a commercially reasonable manner pursuant to Section 2(c), we do not believe that the CALM Act limits entities to just this one means of demonstrating compliance. As described below, we propose that demonstrations of compliance would be required in response to a consumer complaint alleging a loud commercial.[75] Thus, for example, in response to a consumer complaint, a station/MVPD may demonstrate that the dialnorm value of the complained of commercial actually matches the perceived loudness of the content, following the "golden rule." In this manner, the station/MVPD would thereby show that the transmission of the commercial complied with the requirements of the ATSC A/85 RP, rather than showing it installed, utilized and maintained equipment, pursuant to the provisions of Section 2(c). We believe that the ability to make such a showing would be useful for stations/MVPDs that have other means of meeting the goal of the statute and do not choose to rely on the safe harbor to demonstrate compliance. We seek comment on this and other means of complying and demonstrating compliance.

23. We also recognize that stations/MVPDs may take a contractual approach to compliance with the ATSC A/85 RP. Specifically, they may contract with their content providers to ensure that the content delivered to them complies with the ATSC A/85 RP.[76] As noted above, we tentatively conclude that the statute requires that commercials and adjacent programming be transmitted to consumers in compliance with the ATSC A/85 RP and holds stations/MVPDs responsible for preventing the transmission of loud commercials to consumers.[77] However, the ATSC A/85 RP recognizes that it may be more efficient for content providers to measure and encode dialnorm values at the production stage and states that content providers may play a significant role in the process.[78] The ATSC A/85 RP describes several effective solutions for controlling relative loudness of programs and commercials, including that a distributor "ensure" that content is labeled with the correct dialnorm value.[79] Therefore, we believe it is consistent with the ATSC A/85 RP for a station/MVPD to "ensure" that the dialnorm matches the loudness of the content by incorporating the ATSC A/85 RP requirements into its contracts with content providers.[80]

24. Importantly, however, the station/MVPD would remain responsible for noncompliance with the regulations required by the CALM Act where the program source fails to deliver content in compliance with the ATSC A/85 RP, the station/MVPD transmits the nonconforming content to viewers, and the content is the subject of consumer complaints. In this regard, stations/MVPDs may choose to negotiate for indemnification clauses in their content contracts in the event the content provider fails to follow the A/85 RP and the Commission takes enforcement action against the station/MVPD. We seek comment on whether and how regulated entities that use contracts to ensure compliance with ATSC A/85 RP may demonstrate compliance with the regulations required by the CALM Act in response to consumer complaints, and what, if any, quality control measures they should take to monitor the content delivered to them for transmission to consumers. We also welcome comment from content providers and, in particular, from the advertising industry to gauge industry's ability to provide stations/MVPDs with content in compliance with the ATSC A/85 RP. Moreover, should regulated entities pursue the contractual option for ensuring compliance, what amount of time might be necessary for negotiation of new indemnification provisions? Should the Commission factor this contract negotiation timeframe into its approach to enforcement?

25. We specifically invite comment on compliance methods that would be well-suited for small stations/MVPDs. Would a contractual approach be beneficial and workable for small stations/MVPDs? To what extent do large and small stations/MVPDs receive the same content streams, including metadata, from programmers? What other factors that affect stations/MVPDs' compliance as a result of their size should we consider? [81]

3. Station/MVPD Practical Challenges

26. As noted above, in our informal meetings with industry, we heard that MVPDs face specific challenges in complying with the new law. We describe two of these concerns below. We seek comment from industry about these and other practical challenges to compliance. We also seek comment on whether broadcast stations face similar or other challenges. We request that commenters offer solutions as well as describing challenges, and specify how stations/MVPDs can meet their statutory responsibilities.

27. First, as indicated above, several MVPD representatives indicated that they use audio systems that differ from the AC–3 audio system on which the ATSC A/85 RP is based.[82] Furthermore, the ATSC A/85 RP, which the statute directs the Commission to make mandatory, was originally intended for TV broadcast stations and other operators of an ATSC AC–3 audio system and may not be suitable for use

[75] *See infra* discussion of complaint process.

[76] As discussed below, we emphasize that such agreements will not alter the station's/MVPD's obligation to ensure that it is complying with our rules, and any failure to comply may subject the station/MVPD to enforcement action.

[77] *See* 47 U.S.C. 621(a).

[78] *See ATSC DTV Loudness Tutorial Summary* at 2 (stating that, under both fixed and agile dialnorm systems, controlling loudness can be achieved by ensuring that content is delivered properly to the station/MVPD operator). *See also, e.g.,* ATSC A/85 RP § 7.3.2 at 18 and Annex I at 67.

[79] *See* ATSC A/85 RP § 8.1 at 23. *See also* ATSC A/85 RP § 7.3.2 at 18.

[80] A contractual approach to compliance with the ATSC A/85 RP seems consistent with the requirements associated with commercial limits on children's programming. *See 1991 Children's TV Order,* FCC 91–113, 56 FR 19611, April 29, 1991. ("*1991 Children's TV Order*") (stating an MVPD remains liable for violations of the commercial limits on cable network children's programs they carry). In contrast, we believe the rules pertaining to closed captioning are inapposite. *See 1997 Closed Captioning Order,* FCC 97–279, 62 FR 48487, September 16, 1997. ("*1997 Closed Captioning Order*"); and 47 CFR 79.1(g)(6) (stating an MVPD may rely on the accuracy of certifications and is not held responsible for situations where a program source falsely certifies that programming delivered to the MVPD meets the Commission's captioning requirements if the MVPD is unaware that the certification is false). Unlike the CALM Act and the Children's Television Act of 1990 (47 U.S.C. 303a and 303b), Section 713 of the Communications Act, 47 U.S.C. 613, refers to the closed captioning of programming by providers and "owners" of video programming and allocates to owners some responsibility for compliance. *1997 Closed Captioning Order,* at paragraphs 28–29 (noting that "[t]he references to program "owners" in Section 713 reflect Congress' recognition that it is most efficient to caption programming at the production stage, and the assumption that owners and producers will be involved in the captioning process").

[81] *See also infra* discussion of financial hardship and general waiver provisions.

[82] In addition to the AC–3 audio system, MVPDs may use MPEG–1 Layer 2 (MP2), advanced audio coding (AAC) or other systems.

by MVPDs to the extent they use other audio systems.[83] Although the ITU–R BS.1770 audio loudness measurement algorithm can be applied to all audio systems, the specific methods for establishing and maintaining the audio loudness mentioned in the ATSC A/85 RP are not applicable to the non-AC–3 audio systems. Because the statute makes the ATSC A/85 RP mandatory for every station/MVPD, we seek comment on whether and how MVPDs that do not use AC–3 audio system can comply.[84] From our informal discussions with MVPD representatives, we understand that some MVPDs which do not use AC–3 in the transmission of audio content to consumers nevertheless use AC–3 within their distribution networks and transcode content to a non-AC–3 format after commercials are inserted.[85] We also understand that if the dialnorm was set properly while the content was encoded in the AC–3 format, the loudness adjustments will be made when the content is transcoded to another format as if such transcoding occurred in the consumer's own equipment. We seek comment on whether the CALM Act should be interpreted to permit non-AC–3 transmission of commercials if the loudness of commercials is effectively controlled using the techniques described within the ATSC A/85 RP prior to such transmission occurring. Would such an interpretation be consistent with the statutory language mandating that we incorporate ATSC A/85 RP "only insofar as such recommended practice concerns the transmission of commercial advertisements"? Again, we note that ATSC may revise the A/85 RP to account for users of other audio systems. If it does not do so, we also seek comment, as discussed further below, on whether exercise of our waiver authority, conditioned upon use of other effective technology, would be appropriate to address this issue.

28. Second, some MVPDs pointed out that they generally do not create most of the content they transmit to consumers and often receive programs and commercials together in programming blocks from the broadcast station or content provider and pass through these programming blocks to consumers. In addition, they reported that they transmit (or retransmit) channels to consumers on a real time basis and do not have the technical capability to prescreen and correct audio content before transmitting to the consumer. We seek specific comment from MVPDs about how they receive the content from programmers and their technical ability to prescreen and correct audio content that they do not create or insert. To what extent does the contractual approach to compliance discussed above address any such practical challenges faced by MVPDs?

29. Although broadcast industry representatives did not express these same concerns, we seek comment on whether broadcast stations generally have an opportunity to prescreen and correct audio content before transmitting to the consumer.[86] For example, would stations have this ability with respect to their local content, but not for network programming? To what extent can network/affiliate agreements be expected to require that the networks deliver content in compliance with the ATSC A/85 RP?

30. We also seek comment on whether special considerations apply to MVPD carriage of broadcast stations. If a station complies with the ATSC A/85 RP, and the MVPD carries the station without altering the audio content, will the MVPD's retransmission of the station to the consumer likewise comply with the A/85 RP?[87] If broadcast content carried by an MVPD contains loud commercials that are the subject of a complaint, how can we determine which party to hold responsible? We seek comment on these issues.

31. Finally, we also invite comment on other challenges that stations/MVPDs may face and how they can solve these challenges consistent with their responsibilities under the CALM Act. For example, will there be challenges in conforming legacy or inventory content? Also, will MVPDs face particular practical challenges associated with carriage of public, educational and governmental ("PEG") or leased access programming?[88] Are there any legal impediments to MVPD adjustment of audio content to meet the RP A/85 requirements and the goals of the CALM Act? Does Section 315's prohibition on "censorship" of political advertisements pose any legal obstacles?[89] Do small market broadcast stations or small cable/MVPD system operators face particular practical challenges related to their size?

32. Is the contractual approach to compliance discussed above sufficient to address the challenges that stations/MVPDs may face? Or, are there other means of addressing some of these challenges. For example, can retransmission consent agreements be used to clarify responsibilities between stations and MVPDs? Can a similar approach be used for commercial stations that elect mandatory carriage? What, if any, are the implications under copyright licenses? Would the waiver provision in the CALM Act, as discussed below, be an appropriate tool to address certain challenges or special circumstances that stations/MVPDs encounter? Would such a waiver conditioned on compliance by use of a different audio technology that will prevent the transmission of loud commercials to consumers be consistent with the goal of the statute?

4. Complaint Process

33. The overall focus and intent of the CALM Act is to address the problem of loud commercials as consumers experience them. Therefore, we propose to enforce compliance with the statute by focusing on consumer complaints after the rules take effect. If stations/MVPDs take the actions necessary to eliminate or significantly reduce valid loud commercial complaints, then we believe the CALM Act will achieve its purpose. We believe that a consumer complaint driven procedure is the most practical means to monitor industry compliance with our proposed rules. In addition to investigating individual consumer complaints alleging transmission of a loud commercial, we

[83] *See* ATSC A/85 RP § 1 at 7. The ATSC A/85 RP's scope includes MVPDs that use AC–3 audio systems as being "a specific community of interest." *Id.* The A/85 RP also provides guidance regarding how to manage loudness of content without metadata, including non-AC–3 audio content. *Id.* 6 at 16 (discussing delivery or exchange of content without metadata). *See also id.* Annex H.7 at 63–64, Annex I.7 at 69.

[84] The legislative history does not expressly consider the use of non-AC–3 technologies, whether other audio technologies can be effective at addressing the loud commercials problem, whether there would be significant costs associated with changing to exclusively AC–3 systems, or whether the waiver provision in Section 2(b)(3) is intended to address use of other technologies. *See infra* discussion of general waiver.

[85] Transcoding "is a procedure for modifying a stream of data carried" (in this context, the AC–3 audio stream) "so that it may be carried via a different type of network" (in this context, the non-AC–3 audio system). *See* Newton's Telecom Dictionary (definition of "transcoding") at 846 (20th ed. 2004).

[86] As explained *supra,* broadcast TV stations are required to use AC–3 audio systems by Section 73.682 of our rules, which incorporates by reference the ATSC A/53 Standard.

[87] We note the Commission exempts MVPDs from liability under the closed captioning and children's television commercial limits for broadcast content they passively carry, because the Copyright Act of 1976 bars MVPDs from altering the content (including commercials) of retransmitted broadcast channels. *See* 47 CFR 76.225(e) and 25.701(e)(2); *see* 47 CFR 79.1(e)(9). *See also* 17 U.S.C. 111(c)(3), 119(a)(5) and 122(e).

[88] *See* 47 U.S.C. 531(e) and 532(c)(2). *See also* 47 CFR 76.901(a).

[89] 47 U.S.C. 315.

intend to monitor consumer complaints and follow trends to determine where enforcement action is warranted. We invite comment on whether we should supplement the complaint-driven approach with occasional equipment audits, and under what circumstances such audits would be appropriate. We seek comment on our proposed consumer complaint-driven approach and the proposed consumer complaint procedure, as described below.

34. *Filing a Complaint.* We propose that consumers may file their complaints electronically using the Commission's online complaint form (the Form 2000 series) found at *http://esupport.fcc.gov/complaints.htm.* We propose to modify the online complaint form to specifically accommodate complaints about loud commercials.[90] Consumers may also file their complaint by fax to 1–866–418–0232 or by letter mailed to Federal Communications Commission, Consumer & Governmental Affairs Bureau, Consumer Inquiries & Complaints Division, 445 12th Street, SW., Washington, DC 20554. Consumers that want assistance filing their complaint may contact the Commission's Consumer Call Center by calling 1–888–CALL–FCC (1–888–225–5322) (voice) or 1–888–TELL–FCC (1–888–835–5322) (tty).[91] There is no fee for filing a consumer complaint.

35. *Complaint Details.* To ensure that the Commission is able to take appropriate action on a complaint, the consumer should complete fully the online complaint form. For consumers that choose not to use the online complaint form, they can submit a written complaint. The complaint should clearly indicate that it is a loud commercial complaint and include the following information: (1) The complainant's contact information, including name, mailing address, daytime phone number, and e-mail address if available; (2) the name and call sign of the broadcast station or the name and type of MVPD against whom the complaint is directed; (3) the date and time the loud commercial problem occurred; (4) the channel and/or network involved; (5) the name of the television program during which the commercial was viewed; (6) the name of the commercial's advertiser/sponsor or product involved; and (7) a description of the loud commercial problem.

36. We will evaluate the individual complaints we receive to determine which complaints indicate a possible violation of our rules. In addition, we will track these consumer complaints, as well as stations/MVPDs' responses to them, to determine if there are trends that suggest a need for enforcement action. We will generally forward individual complaints to the appropriate broadcast station or MVPD so that stations/MVPDs can both be aware of a potential problem and take action to address it and to respond to their viewers/subscribers appropriately. When appropriate, we will investigate the station/MVPD and require it to respond to the alleged violation(s) with a detailed explanation of its actions. If the station/MVPD asserts in its response to us that it did not violate the rules, we would expect it to provide us with sufficient records and documentation to demonstrate compliance. We seek comment on what records and documentation stations/MVPDs should be required to retain to demonstrate compliance, including but not limited to records and documentation to demonstrate compliance with the Section 2(c) safe harbor provision.[92] If the station/MVPD acknowledges in its response to us that it violated the rules, we intend to require an explanation of why the violation occurred and what corrective actions it will take to prevent future violations. We seek comment on whether to require stations/MVPDs to designate a contact person to receive loud commercial complaints, or if we can use existing contact information from our various databases (*e.g.,* CDBS, COALS, etc.) for this purpose.[93] We note that a television broadcast station would be required to retain in its local public inspection file a copy of a complaint filed with the Commission about a loud commercial under the Commission's existing rules.[94] We seek comment on whether to require MVPDs to do the same in their local public inspection files or, to the extent some MVPDs are not obligated to maintain a public inspection file, to retain such complaints for a comparable period of time in an accessible location.[95] We also seek comment on what, if any, requirements should be imposed on stations/MVPDs to retain copies of loud commercial complaints that they receive directly from consumers.[96]

5. Enforcement

37. Under the general forfeiture provisions of the Communications Act, stations/MVPDs are subject to forfeitures for violations of the Communications Act and Commission's rules.[97] We will apply these provisions to enforce compliance with the CALM Act and our rules implementing it. This approach is consistent with the legislative history of the CALM Act.[98] Accordingly, we will use the full range of enforcement tools available to us.[99] We seek comment on whether there are any general situations that may warrant special consideration in enforcing the Act. We also invite comment on whether we should establish a base forfeiture amount for violations of our rules implementing the CALM Act, and if so, on the appropriate base forfeiture amount.[100]

C. Financial Hardship and General Waivers

38. Section 2(b)(2) of the CALM Act provides that the Commission may grant a one-year waiver of the effective date of the rules implementing the statute to any station/MVPD that shows it would be a "financial hardship" to obtain the necessary equipment to comply with the rules, and may renew such waiver for one additional year.[101] The legislative history indicates congressional intent for us to interpret "financial hardship" broadly and, in particular, recognizes "that television broadcast stations in smaller markets and smaller cable

[90] We intend to add "loud commercials" as a complaint category under the complaint type menu for "Broadcast (TV and Radio), Cable, and Satellite Issues." We will also add specific questions which relate to the filing of a loud commercial complaint. *See, infra,* discussion of complaint details.

[91] We also encourage consumers to visit the Consumer & Governmental Affairs Bureau website at *http://www.fcc.gov/cgb/or* to visit our online Consumer Help Center at *http://reboot.fcc.gov/consumers/.*

[92] *See, supra,* discussion of demonstrating safe harbor compliance and of other ways to demonstrate compliance.

[93] The Commission's Consolidated Database System ("CDBS") Electronic Filing System is publicly available online via the Media Bureau's Electronic Filing and Public Access website at: *http://www.fcc.gov/mb/cdbs.html* or CDBS website at: *http://fjallfoss.fcc.gov/prod/cdbs/forms/prod/cdbs_ef.htm.* The Media Bureau's Cable Operations and Licensing System (COALS) database is publicly available online at *http://fjallfoss.fcc.gov/csb/coals/index.html.*

[94] *See* 47 CFR 73.3526(e)(10) (requiring commercial TV stations to retain in its local public inspection file material relating to a Commission investigation or complaint to the Commission). The rule requires a station to retain the complaint in its public file until it is notified in writing that the complaint may be discarded. *Id. See also* 47 CFR 73.3527(e)(11) (relating to noncommercial TV stations).

[95] *See, e.g.,* 47 CFR 76.1700 *et seq.* and 25.701.

[96] We note that, if we require stations/MVPDs to retain in their public file copies of loud commercial complaints which they receive directly from consumers, our trends analysis may include consideration of consumer complaints filed directly with the station/MVPD.

[97] 47 U.S.C. 503.

[98] *See, e.g., Senate Committee Report to S. 2847* at 4.

[99] *See* 47 U.S.C. 503(b)(1)(B) and 47 CFR 1.80(a)(2) (stating that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a forfeiture penalty).

[100] *See* 47 CFR 1.80.

[101] *See* 47 U.S.C. 621(b)(2).

systems may face greater challenges budgeting for the purchase of equipment to comply with the bill than television broadcast stations in larger markets or larger cable systems."[102] In addition, Section 2(b)(3) of the CALM Act provides that the statute does not affect the Commission's authority to waive any rule required by the CALM Act, or the application of any such rule, for good cause shown with regard to any station/MVPD or class of stations/MVPDs.[103] We intend to delegate authority to the Media Bureau to consider waiver requests filed pursuant to Sections 2(b)(2) and 2(b)(3) of the CALM Act.

39. *Financial Hardship.* We propose a financial hardship waiver standard for evaluating requests for one-year extensions of the effective date. To request a financial hardship waiver pursuant to Section 2(b)(2), we propose to require a station/MVPD to provide: (1) Evidence of its financial condition, such as financial statements;[104] (2) a cost estimate for obtaining the necessary equipment to comply with the required regulation; (3) a detailed statement explaining why its financial condition justifies postponing compliance; and (4) an estimate of how long it will take to comply, along with supporting information. Consistent with the statements in the legislative history that we should interpret "financial hardship" broadly, we do not propose to require waiver applicants to show negative cash flow, as we have done in other contexts.[105] Instead, we propose to require only that the station/MVPD's assertion of financial hardship be reasonable under the circumstances.[106] As part of the showing set forth above, we propose to require a station/MVPD that requests a financial hardship waiver to describe the equipment it intends to obtain to comply with the CALM Act and the expense associated with that equipment.[107] We seek comment on our proposals. Should we allow a station/MVPD to provide federal tax returns in lieu of financial statements? We also seek comment on how to address the situation in which an MVPD is carrying a broadcast station that has been granted a financial hardship waiver. We also invite comment on whether the financial hardship waiver provisions of the statute should be interpreted to apply to any successors to ATSC A/85 RP.

40. *Small Stations/MVPD Systems.* We seek specific comment on whether to create a streamlined financial hardship waiver approach for small market broadcast stations and operators of small MVPD systems. One way of streamlining the hardship waivers would be to reduce the amount of information stations/MVPDs that meet an appropriate definition of "small" would be required to submit to justify the waiver postponing the effective date for one year. We seek comment on whether such additional relief for small stations/systems would be appropriate; how to streamline the process for requesting waivers; and how to define "small" for this purpose. For example, would it be appropriate to define a "small market television broadcast station" as a station that is in television markets 101–210 and is not affiliated with a top-four network (*i.e.,* ABC, CBS, Fox and NBC)?[108] Would it be appropriate to define a "small MVPD system" as one with fewer than 15,000 subscribers (on the effective date of the rules)[109] and that is not affiliated with a larger operator?[110]

41. *General Waiver Authority.* Section 2(b)(3) of the CALM Act provides that the Commission may waive any rule required by the CALM Act, or the application of any such rule, to any station/MVPD for good cause shown under Section 1.3 of the Commission's rules.[111] In addition to any requests for waiver necessitated by unforeseen circumstances, we believe this provision preserves our inherent authority to grant waivers to MVPDs that cannot implement the ATSC A/85 RP because of the technology they use. Grant of a waiver under such circumstances would be more likely to be in the public interest if the waiver recipient can demonstrate that it, by some other means, will be able to prevent the transmission of loud commercials, as intended by the CALM Act. We seek comment on the appropriate exercise of our waiver authority under such circumstances, and on whether non-AC–3 audio systems can effectively prevent loud commercials.

42. We also invite comment on whether and how waivers should be used to address challenges that stations/MVPDs foresee in complying with the regulations required by the CALM Act. For example, would it be appropriate and consistent with the provisions of the CALM Act to grant a blanket one-year extension of the effective date of our rules to small market stations or smaller MVPD operators because such entities are generally likely to face financial hardships and/or because of the administrative burdens associated with requesting financial hardship waivers for such entities?[112] Are small

[102] *See Senate Committee Report to S. 2847* at 4. The legislative history, in particular, states that the Commission "should not require stations or MVPDs to demonstrate that they have negative cash flow or are in receivership for bankruptcy to be eligible for a waiver based on financial hardship." This appears to be a reference to the strict financial hardship standard established in 2008 for DTV station build-out extensions given the short time remaining before the DTV transition deadline. *See Third DTV Periodic Report and Order,* FCC 07–228, 73 FR 5634, January 30, 2008. ("*Third DTV Periodic Report and Order*") (requiring a station to either (1) submit proof that they have filed for bankruptcy or that a receiver has been appointed, or (2) submit an audited financial statement for the previous three years showing negative cash flow).

[103] *See* 47 U.S.C. 621(b)(3).

[104] Financial statements should be compiled according to generally accepted accounting practices ("GAAP"). Stations/MVPDs may request confidential treatment for this financial information pursuant to 47 CFR 0.459.

[105] *See, e.g., Third DTV Periodic Report and Order,* at para. 74 (generally requiring three years showing negative cash flow for DTV station build-out extensions); *2002 Broadcast Ownership Review* Order, FCC 03–127, 68 FR 46286, August 5, 2003 (generally requiring three years of negative cash flow to show that a station is a "failed station" for purposes of a waiver of the local TV ownership rules); *Great Plains Cable Television, Inc. et al. Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules,* 22 FCC Rcd 13414, 13426–7, paragraphs 39–40 (2007) (unpublished) (granting waiver for extraordinary financial hardships upon evidence of negative cash flow).

[106] This approach is consistent with the more liberal process for DTV build-out extensions prior to 2008. *See 2001 DTV Recon Order,* FCC 01–330, 66 FR 65122, December 18, 2001 (establishing four-part test for financial hardship to obtain a DTV build-out extension: (1) An itemized estimate of the cost of meeting the build-out requirements; (2) a detailed statement explaining why its financial condition precludes such an expenditure; (3) a detailed accounting of the applicant's good faith efforts to meet the deadline, including its good faith efforts to obtain the requisite financing and an explanation why those efforts were unsuccessful; and (4) an indication when the applicant reasonably expects to complete construction).

[107] If, for example, an MVPD does not intend to install, utilize and maintain equipment to demonstrate compliance with the CALM Act, but rather intends to rely primarily on contractual arrangements with content providers, and more limited monitoring equipment, then it would not qualify for a financial waiver based upon the cost of equipment it never intends to obtain.

[108] *See, e.g., Third DTV Periodic Report and Order,* 23 FCC Rcd at 3041, para. 97, n.292 (defining a small market broadcast station in the DTV context).

[109] *See, e.g.,* 47 CFR 76.901(c) (defining a "small system" as a cable system serving 15,000 or fewer subscribers in the context of cable rate regulation).

[110] *See, e.g., DTV Broadcast Carriage Signals Order,* FCC 08–193, 73 FR 61742, October 17, 2008 (defining a "small cable operator" in the context of broadcast carriage requirements and excluding cable systems affiliated with a cable operator serving more than 10 percent of all MVPD subscribers).

[111] *See* 47 U.S.C. 621(b)(3). *See* 47 CFR 1.3 (the Commission's rules "may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission" and that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown").

[112] We also note that a blanket one-year extension for small stations/MVPDs would eliminate a significant administrative burden on the

stations/systems as a class likely to need more time to obtain the necessary equipment to comply with the CALM Act? We also invite comment on the potential impact on consumers of a blanket one-year extension for small stations/MVPDs, including whether it would engender confusion and frustration if the effective date for the CALM Act were delayed for some stations/MVPDs but not others. What impact might a blanket waiver approach have on consumers?

43. *Filing Deadline.* We propose that, absent extraordinary circumstances, the deadline for filing a waiver request pursuant to either Section 2(b)(2) or 2(b)(3) of the CALM Act will be 180 days before the effective date of our rules. This will afford the Bureau time to consider these requests before our rules take effect. Requests for waiver renewals must be filed at least 180 days before the waiver expires. Requests for waiver based on unforeseen circumstances, of course, can be filed at any time. We seek comment on these proposed filing deadlines.

44. *Filing Requirements.* We propose to require a station/MVPD to file its financial hardship or general waiver request electronically into this docket through the Commission's Electronic Comment Filing System ("ECFS") using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/*. The filing must be clearly designated as a "financial hardship" or "general" waiver request. Such requests must also comply with Section 1.3 of our rules.[113] We believe this process will ensure that all interested parties receive notice and an opportunity to comment on such waiver requests. We propose that we will not impose a filing fee for waiver requests pursuant to the waiver provisions of the CALM Act. We seek comment on our proposed filing requirements.

IV. Conclusion

45. Congress' directive to us in the CALM Act is clear: Incorporate by reference into our rules and make mandatory the ATSC A/85 RP to prevent TV broadcast stations, cable and DBS operators, and other MVPDs from transmitting "loud commercials" to consumers. To achieve this directive, we propose a consumer complaint-driven process to evaluate and ensure compliance with our rules, similar to what we have done in other contexts. We believe our proposed implementation of the CALM Act appropriately focuses on benefits for consumers, while limiting costs to stations and MVPDs to the extent possible.

V. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

46. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA") [114] the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") concerning the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* ("*NPRM*"). Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the NPRM [115] and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").[116] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register.**[117]

1. Need for, and Objectives of, the Proposed Rule Changes

47. This document proposes rules to implement the Commercial Advertisement Loudness Mitigation (CALM) Act.[118] Among other things, the CALM Act directs the Commission to incorporate into its rules by reference and make mandatory a technical standard developed by an industry standard-setting body that is designed to prevent television commercial advertisements from being transmitted at louder volumes than the program material they accompany.[119] Specifically, the CALM Act requires the Commission to incorporate by reference the ATSC A/85 Recommended Practice ("ATSC A/85 RP") [120] and make it mandatory "insofar as such recommended practice concerns the transmission of commercial advertisements by a television broadcast station, cable operator, or other multichannel video programming distributor." [121] The NPRM considers proposals for implementing the statute and applying the required regulation. Some of these proposals are contained in Sections A.4. and A.5. of this IRFA, and we invite comment on these proposals. As mandated by the statute, the proposed rules will apply to TV broadcasters, cable operators and other multichannel video programming distributors ("MVPDs").[122] The new law requires the Commission to adopt the required regulation on or before December 15, 2011,[123] and it will take effect one year after adoption.[124]

2. Legal Basis

48. The proposed action is authorized pursuant to the Commercial Advertisement Loudness Mitigation Act of 2010, Public Law 111–311, 124 Stat. 3294, and Sections 1, 2(a), 4(i) and (j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) and (j), 303 and 621.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

49. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[125] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." [126] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[127] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of

Commission of processing hardship waiver requests.

[113] *See* 47 CFR 1.3.

[114] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.,* has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[115] *See* Section IV.D. of the *NPRM.*

[116] *See* 5 U.S.C. 603(a).

[117] *See id.*

[118] The Commercial Advertisement Loudness Mitigation ("CALM") Act, Pub. L. 111–311, 124 Stat. 3294 (2010) (codified at 47 U.S.C. 621).

[119] *See* 47 U.S.C. 621(a); *Senate Committee Report to S. 2847* at 1; *House Committee Report to H.R. 1084* at 1.

[120] *See* ATSC A/85: "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television," (May 25, 2011) ("ATSC A/85 RP"). To obtain a copy of the ATSC A/85 RP, visit the ATSC Web site: *http://www.atsc.org/cms/standards/a_85-2009.pdf.*

[121] *See* 47 U.S.C. 621(a).

[122] We refer herein to covered entities collectively as "stations/MVPDs" or "regulated entities."

[123] *See* 47 U.S.C. 621(a).

[124] *See* 47 U.S.C. 621(b)(1).

[125] 5 U.S.C. 603(b)(3).

[126] 5 U.S.C. 601(6).

[127] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

operation; and (3) satisfies any additional criteria established by the SBA.[128] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

50. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than $14.0 million in annual receipts.[129] Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."[130] The Commission has estimated the number of licensed commercial television stations to be 1,390.[131] According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of January 31, 2011, 1,006 (or about 78 percent) of an estimated 1,298 commercial television stations[132] in the United States have revenues of $14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 391.[133] We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[134] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

51. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

52. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[135] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.[136] According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.[137] Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.[138] Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the NPRM.

53. *Cable Companies and Systems (Rate Regulation Standard).* The Commission has also developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[139] As of 2008, out of 814 cable operators,[140] all but 10 (that is, 804) qualify as small cable companies under this standard.[141] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[142] Current Commission records show 6,000 cable systems. Of these, 726 have 20,000 subscribers or more, based on the same records. We estimate that there are 5,000 small systems based upon this standard.

54. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[143] There are approximately 63.7 million cable subscribers in the United States today.[144] Accordingly, an operator serving fewer than 637,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[145] Based on available data, we find that the number of cable operators serving 637,000 subscribers or less is also 804.[146] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues

[128] 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

[129] *See* 13 CFR 121.201, NAICS Code 515120 (2007).

[130] *Id.* This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

[131] *See* News Release, "Broadcast Station Totals as of December 31, 2010," 2011 WL 484756 (F.C.C.) (dated Feb. 11, 2011) ("*Broadcast Station Totals*"); also available at *http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0211/DOC-304594A1.pdf.*

[132] We recognize that this total differs slightly from that contained in *Broadcast Station Totals,* however, we are using BIA's estimate for purposes of this revenue comparison.

[133] *See Broadcast Station Totals.*

[134] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR 121.103(a)(1).

[135] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition), *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[136] 13 CFR 121.201, NAICS code 517110 (2007).

[137] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010).

[138] *See id.*

[139] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[140] Cable MSO Ownership, A Geographical Analysis, 2009 Edition, 14–31, SNL Kagan (June 2009).

[141] *Id.* at 12.

[142] 47 CFR 76.901(c).

[143] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[144] *See* Cable TV Investor: Deals & Finance, No. 655, SNL Kagan, March 31, 2009, at 6.

[145] 47 CFR 76.901(f); *see* Public Notice, FCC Announces New Subscriber Count for the Definition of Small Cable Operator, DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[146] Cable MSO Ownership at 12.

exceed $250 million.[147] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

55. *Direct Broadcast Satellite ("DBS") Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, "Wired Telecommunications Carriers," [148] which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[149] However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled "Cable and Other Program Distribution." The definition of Cable and Other Program Distribution provided that a small entity is one with $12.5 million or less in annual receipts.[150] Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation ("EchoStar") (marketed as the DISH Network).[151] Each currently offers subscription services. DIRECTV [152] and EchoStar [153] each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider. We seek comments that have data on the annual revenues and number of employees of DBS service providers.

56. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, "Wired Telecommunications Carriers," [154] which was developed for small wireline firms.[155] Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[156] However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled "Cable and Other Program Distribution." The definition of Cable and Other Program Distribution provided that a small entity is one with $12.5 million or less in annual receipts.[157] As of June 2004, there were approximately 135 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs.[158] The IMCC indicates that, as of June 2006, PCOs serve about 1 to 2 percent of the multichannel video programming distributors (MVPD) marketplace.[159] Individual PCOs often serve approximately 3,000–4,000 subscribers, but the larger operations serve as many as 15,000–55,000 subscribers. In total, as of June 2006, PCOs serve approximately 900,000 subscribers.[160] Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest 10 PCOs, we believe that a substantial number of PCOs may have been categorized as small entities under the now superseded SBA small business size standard for Cable and Other Program Distribution.[161]

57. *Open Video Services.* The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[162] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[163] OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." [164] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 3,188 firms in this previous

[147] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. *See* 47 CFR 76.901(f).

[148] *See* 13 CFR 121.201, NAICS code 517110 (2007). The 2007 North American Industry Classification System ("NAICS") defines the category of "Wired Telecommunications Carriers" as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. *By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.*" (*Emphasis* added to text relevant to satellite services.) U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; *http://www.census.gov/naics/2007/def/ND517110.HTM.*

[149] 13 CFR 121.201, NAICS code 517110 (2007).

[150] 13 CFR 121.201, NAICS code 517510 (2002).

[151] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Thirteenth Annual Report, 24 FCC Rcd 542, 580, para. 74 (2009) ("13th Annual Report"). We note that, in 2007, EchoStar purchased the licenses of Dominion Video Satellite, Inc. ("Dominion") (marketed as Sky Angel). *See* Public Notice, "Policy Branch Information; Actions Taken," Report No. SAT–00474, 22 FCC Rcd 17776 (IB 2007).

[152] As of June 2006, DIRECTV is the largest DBS operator and the second largest MVPD, serving an estimated 16.20% of MVPD subscribers nationwide. *See id.* at 687, Table B–3.

[153] As of June 2006, DISH Network is the second largest DBS operator and the third largest MVPD, serving an estimated 13.01% of MVPD subscribers nationwide. *Id.* As of June 2006, Dominion served fewer than 500,000 subscribers, which may now be receiving "Sky Angel" service from DISH Network. *See id.* at 581, para. 76.

[154] *See* 13 CFR 121.201, NAICS code 517110 (2007).

[155] Although SMATV systems often use DBS video programming as part of their service package to subscribers, they are not included in Section 340's definition of "satellite carrier." *See* 47 U.S.C. 340(i)(1) and 338(k)(3); 17 U.S.C. 119(d)(6).

[156] 13 CFR 121.201, NAICS code 517110 (2007).

[157] 13 CFR 121.201, NAICS code 517510 (2002).

[158] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Eleventh Annual Report, FCC 05–13, para. 110 (rel. Feb. 4, 2005) ("*2005 Cable Competition Report*").

[159] *See 13th Annual Report,* 24 FCC Rcd at 684, Table B–1.

[160] *Id.*

[161] 13 CFR 121.201, NAICS code 517510 (2002).

[162] 47 U.S.C. 571(a)(3)–(4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* MB Docket No. 06–189, Thirteenth Annual Report, 24 FCC Rcd 542, 606, para. 135 (2009) ("*Thirteenth Annual Cable Competition Report*").

[163] *See* 47 U.S.C. 573.

[164] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

category that operated for the entire year.[165] Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more.[166] Thus, under this size standard, most cable systems are small and may be affected by rules adopted pursuant to the NPRM. In addition, we note that the Commission has certified some OVS operators, with some now providing service.[167] Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.[168] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

58. The NPRM contains proposals that, if adopted, would impose new reporting, recordkeeping and/or other compliance requirements, including the following. First, the NPRM considers what showing is required to satisfy the Section 2(c) safe harbor compliance provision.[169] Second, the NPRM considers what types of showings are required for a station/MVPD that chooses not to demonstrate Section 2(c) safe harbor compliance, but instead chooses to demonstrate compliance with the rules implementing the CALM Act by some other means.[170] This includes, for example, whether and how regulated entities could use contracts to ensure compliance and what quality control measures they can take to monitor the content delivered to them for transmission to consumers.[171] Third, the NPRM considers whether to require stations/MVPDs to designate a contact person to receive loud commercial complaints.[172] Fourth, the NPRM notes that television broadcast stations will be required to retain in their local public inspection file material a copy of a complaint filed with the Commission about a loud commercial, and considers whether to require MVPDs to do the same in their local public inspection file.[173] The NPRM also considers what, if any, requirements should be imposed on stations/MVPDs to retain a copy of a loud commercial complaint that it receives directly from consumers? [174] Finally, the NPRM considers what showing is required to respond to a consumer complaint alleging a loud commercial that is forwarded to it by the Commission.[175] The NPRM proposes to require the station/MVPD to investigate the alleged violation and provide a detailed explanation of its findings. In addition, if the station/MVPD asserts in its response that it did not violate the rules, it must provide the Commission with sufficient records and documentation to demonstrate compliance. The NPRM considers what records and documentation should be required to demonstrate compliance. If the station/MVPD acknowledges in its response that it violated the rules, it must provide the Commission with an explanation of why the violation occurred and what corrective actions it will take to prevent future violations.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

59. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for 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.[176]

60. The express language of the statute requires that the new technical loudness standard (*i.e.,* the ATSC A/85 RP) be made mandatory for all stations/MVPDs, regardless of size.[177] However, the statute also provides for a one-year waiver of the effective date of the rules implementing the statute to any station/MVPD that shows it would be a "financial hardship" to obtain the necessary equipment to comply with the rules and allows renewal of such waiver for one additional year.[178] The NPRM proposes a broad financial hardship waiver standard for approving such waivers. In particular, this waiver provision should benefit television broadcast stations in smaller markets and smaller MVPD systems, which may face greater challenges in budgeting for the purchase of equipment to comply with the law than television broadcast stations in larger markets or larger MVPD systems. The NPRM also specifically considers whether to create a streamlined financial hardship waiver process for small market broadcast stations and operators of small MVPD systems.[179] Finally, the statute also provides that the Commission may waive any rule required by the CALM Act, or the application of any such rule, for good cause shown to any station/MVPD.[180] This provision allows us to consider legitimate requests for waiver of specific compliance with the ATSC A/85 RP, provided the station/MVPD can prevent the transmission of loud commercials to consumers and, thus, comply with the overarching goal of the statute and the ATSC A/85 RP. The NPRM considers alternative approaches to implementing the waiver provisions of the statute and specifically considers if an alternative approach would facilitate small businesses' compliance with the ATSC A/85 RP (and thus our rules).

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

61. None.

B. Initial Paperwork Reduction Act of 1995 Analysis

62. This NPRM has been analyzed with respect to the Paperwork Reduction Act of 1995 ("PRA") [181] and contains proposed new and modified information collection requirements.[182] It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the

[165] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010).

[166] *See id.*

[167] A list of OVS certifications may be found at *http://www.fcc.gov/mb/ovs/csovscer.html.*

[168] *See Thirteenth Annual Cable Competition Report,* 24 FCC Rcd at 606–07, para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[169] *See NPRM* paragraphs 16–21. Section 2(c) requires a station/MVPD seeking "safe harbor" compliance to demonstrate that it has installed, utilized and maintained the necessary equipment in a commercially reasonable manner.

[170] *See id.* paragraphs 22–23.

[171] *See id.* para. 23.

[172] *See id.* para. 36.

[173] *See id.*

[174] *See id.*

[175] *See id.*

[176] 5 U.S.C. 603(c)(1)–(c)(4)

[177] *See* 47 U.S.C. 621(a).

[178] *See Id.* 621(b)(2).

[179] *See NPRM* paras. 40 and 42.

[180] *See* 47 U.S.C. 621(b)(3).

[181] The Paperwork Reduction Act of 1995 ("PRA"), Public Law 104–13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[182] We propose to modify existing information collection requirements relating to the Commission's online complaint form (the Form 2000 series). *See* OMB Control No. 3060–0874. We also propose to create a new information collection requirement to cover the filing of financial hardship and general waiver requests pursuant to Sections 2(b)(2) and 2(b)(3) of the CALM Act.

PRA.[183] The Commission, as part of its continuing effort to reduce paperwork burdens, invites OMB, the general public, and other interested parties to comment on the information collection requirements contained in this document, as required by the PRA.

63. Written PRA comments on the proposed information collection requirements contained herein must be submitted on or before 60 days after the date of publication in the **Federal Register.** Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.[184] In addition, we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002.[185]

64. In addition to filing comments with the Office of the Secretary, a copy of any PRA comments on the proposed information collection requirements contained herein should be submitted to the Federal Communications Commission (FCC) via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167. For additional information concerning the information collection requirements contained in this NPRM, send an e-mail to *PRA@fcc.gov* or contact Cathy Williams, *Cathy.Williams@fcc.gov,* of the Office of Managing Director, Performance Evaluation and Records Management, (202) 418–2918.

65. To view a copy of the information collection requests (ICRs) submitted to OMB: (1) Go to the OMB Information Collection Review Data on Reginfo.gov web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the Select Agency box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the title of the ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

OMB Control Number: 3060–0874

Title: FCC Form 2000 A through F, FCC Form 475–B, FCC Form 1088 A through H, and FCC Form 501—Consumer Complaint Forms: General Complaints, Obscenity or Indecency Complaints, Complaints under the Telephone Consumer Protection Act, and Slamming Complaints.

Form Number: FCC Form 2000 A through F, FCC Form 475–B, FCC Form 1088 A through H, and FCC Form 501.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; individuals or household; not-for profit institutions; State, local or tribal government.

Number of Respondents and Responses: 523,193 respondents and 523,193 responses.

Frequency of Response: On occasion reporting requirement.

Estimated Time per Response: 0.25 to 0.5 hours.

Total Annual Burden: 198,204 hours.

Total Annual Cost to Respondents: None.

Obligation to Respond: Voluntary. The statutory authority for this collection of information is contained in 47 U.S.C 151, 152, 154(i) and (j), 303(r) and 621.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice ("SORN"), FCC/CGB–1, "Informal Complaints and Inquiries," which became effective on January 25, 2010.

Privacy Impact Assessment: The Privacy Impact Assessment ("PIA") for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html*.

Needs and Uses: Consumers may file complaints about loud commercials using the Commission's online complaint form (specifically, the Form 2000E). Consumers may also file their complaint by fax or by letter. The information obtained by consumer complaints will be used by Commission staff to evaluate and ensure that TV stations and MVPDs are in compliance with the rules implementing the Commercial Advertisement Loudness Mitigation ("CALM") Act. FCC Form 2000E is the only form that is contained in this collection that has proposed form revisions to it. All of the other forms contained in this collection would remain unchanged.

OMB Control Number: 3060–xxxx.

Title: Commercial Advertisement Loudness Mitigation ("CALM") Act; Financial Hardship and General Waiver Requests.

Form Number: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 4,500 respondents and 4,500 responses.

Frequency of Response: On occasion reporting requirement.

Estimated Time per Response: 20 hours.

Total Annual Burden: 90,000 hours.

Total Annual Cost to Respondents: $2,700,000.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection of information is contained in 47 U.S.C 151, 152, 154(i) and (j), 303(r) and 621.

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents, but, in accordance with the Commission's rules, 47 CFR 0.459, a station/MVPD may request confidential treatment for financial information supplied with its waiver request.

Privacy Impact Assessment: No impact(s).

Needs and Uses: TV stations and MVPDs may file financial hardship waiver requests to seek a one-year waiver of the effective date of the rules implementing the CALM Act or to request a one-year renewal of such waiver. A TV station or MVPD must demonstrate in its waiver request that it would be a "financial hardship" to obtain the necessary equipment to comply with the rules. TV stations and MVPDs may file general waiver requests to request waiver of the rules implementing the CALM Act for good cause. The information obtained by financial hardship and general waiver requests will be used by Commission staff to evaluate whether grant of a waiver would be in the public interest.

C. Ex Parte Rules

66. *Permit-But-Disclose.* This proceeding will be treated as a "permit-but-disclose" proceeding in accordance

[183] *See* 44 U.S.C. 3507(d).

[184] *See* 44 U.S.C. 3506(c)(2).

[185] The Small Business Paperwork Relief Act of 2002 ("SBPRA"), Public Law 107–198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); *see* 44 U.S.C. 3506(c)(4).

with the Commission's *ex parte* rules.[186] *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed.[187] More than a one- or two-sentence description of the views and arguments presented is generally required.[188] Additional rules pertaining to oral and written presentations in "permit-but-disclose" proceedings are set forth in section 1.1206(b) of the rules.[189]

D. Filing Requirements

67. *Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules,[190] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.[191]

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/or* the Federal eRulemaking Portal: *http://www.regulations.gov*.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to Room TW–A325 at FCC Headquarters, 445 12th Street, SW., Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8 a.m. to 7 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to FCC Headquarters, 445 12th Street, SW., Washington, DC 20554.

68. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publically available online via ECFS.[192] These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street, SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m.

69. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

70. *Additional Information.* For additional information on this proceeding, contact Evan Baranoff, *Evan.Baranoff@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120 or Shabnam Javid, *Shabnam.Javid@fcc.gov*, of the Engineering Division, Media Bureau at (202) 418–7000.

VI. Ordering Clauses

71. Accordingly, *it is ordered* that pursuant to the Commercial Advertisement Loudness Mitigation Act of 2010, Public Law 111–311, 124 Stat. 3294, and Sections 1, 2(a), 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) and (j), 303(r), and 621, *notice is hereby given* of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

72. *It is further ordered* that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 73 and 76

Cable television, Digital television, Incorporation by reference, Satellite television, Television.

Federal Communications Commission.

Avis Mitchell,

Federal Register Liaison.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 73 and 76 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

2. Section 73.682 is amended by adding paragraph (e) to read as follows:

§ 73.682 TV transmission standards.

* * * * *

(e)(1) *Transmission of commercial advertisements by television broadcast station.* Effective [one year after date of FCC adoption], television broadcast stations must comply with the ATSC A/85: "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television," (May 25, 2011) ("ATSC A/85 RP"), and any successor thereto, approved by the ATSC (incorporated by reference, see § 73.8000), insofar as it concerns the transmission of commercial advertisements. ATSC A/85 RP is available from Advanced Television Systems Committee (ATSC), 1750 K Street, NW., Suite 1200, Washington, DC 20006, or at the ATSC Web site: *http://www.atsc.org/standards.html*.

(2) A television broadcast station that installs, utilizes, and maintains in a commercially reasonable manner the equipment and associated software to comply with ATSC A/85 shall be deemed in compliance with this section.

3. Section 73.8000 is amended by adding paragraph (b)(5) to read as follows:

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[186] *See* 47 CFR 1.1206 (rule for permit-but-disclose" proceedings); *see also id.* 1.1200–1.1216.

[187] *See* 1.1206(b)(2).

[188] *See id.*

[189] *See id.* 1.1206(b). *See also Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings,* Public Notice, 15 FCC Rcd 19945 (2000). We note that the Commission recently amended the rules governing the content of *ex parte* notices. *See Amendment of the Commission's Ex Parte Rules and Other Procedural Rules,* Report and Order and Further Notice of Proposed Rulemaking, GC Docket No. 10–43, FCC 11–11, paragraphs 35–36 (rel. Feb. 2, 2011).

[190] *See id.* 1.415, 1419.

[191] *See Electronic Filing of Documents in Rulemaking Proceedings,* Report and Order, 63 FR 24121, May 1, 1998.

[192] Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

§ 73.8000 Incorporation by reference.

* * * * *

(b) * * *

(5) ATSC A/85: "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television" (May 25, 2011), IBR approved for § 73.682.

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

4. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

5. Section 76.607 is added to read as follows:

§ 76.607 Transmission of commercial advertisements.

(a) Effective [one year after date of FCC adoption], cable operators and other multichannel video programming distributors must comply with the ATSC A/85: "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television" (May 25, 2011) ("ATSC A/85 RP"), and any successor thereto, approved by the ATSC (incorporated by reference, see § 76.602), insofar as it concerns the transmission of commercial advertisements. ATSC A/85 RP is available from Advanced Television Systems Committee (ATSC), 1750 K Street, NW., Suite 1200, Washington, DC 20006, or at the ATSC Web site: *http://www.atsc.org/standards.html*.

(b) A cable operator or other multichannel video programming distributor that installs, utilizes, and maintains in a commercially reasonable manner the equipment and associated software to comply with ATSC A/85 shall be deemed in compliance with this section.

6. Section 76.602 is amended by adding paragraph (b)(10) to read as follows:

§ 76.602 Incorporation by reference.

* * * * *

(b) * * *

(10) ATSC A/85: "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television" (May 25, 2011), IBR approved for § 76.602.

Note: The following Appendix will not be included in the Code of Federal Regulations.

Appendix: List of Participants in Informal Meetings

ABC
American Cable Association ("ACA")
AT&T
Advanced Television Systems Committee, Inc. ("ATSC")
CBS
Consumer Electronics Association ("CEA")
Consumers Union ("CU")
DIRECTV, Inc. ("DIRECTV")
DISH Network L.L.C. ("DISH")
Dolby Laboratories, Inc. ("Dolby")
FOX
Free press
Massillon Cable TV
Association for Maximum Service Television, Inc. ("MSTV")
National Association of Broadcasters ("NAB")
National Cable & Telecommunications Association ("NCTA")
NBC Universal
Public Broadcasting Service ("PBS")
Verizon
Wide Open West

[FR Doc. 2011–13822 Filed 6–2–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[EO–13563–FAR–Docket Number 2011–0085; Sequence 1]

48 CFR Chapter 1

FAR Council's Plan for Retrospective Review Under Executive Order 13563—Preliminary Plan

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Request for Information.

SUMMARY: The Federal Acquisition Regulatory (FAR) Council has developed a preliminary plan for the retrospective analysis of provisions in the FAR, in accordance with Executive Order (E.O.) 13563, "Improving Regulation and Regulatory Review." The E.O. sets forth principles and requirements designed to strengthen regulations and regulatory review by promoting public participation, improving integration and innovation, increasing flexibility, and increasing retrospective analysis of existing rules. The E.O. requires every agency to develop "a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether such regulations should be modified, streamlined, expanded or repealed to make the agency's regulatory program more effective and or less burdensome in achieving its regulatory objectives." To comply with E.O. 13563, the FAR Council invites interested members of the public to submit comments on its preliminary plan available at *http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system.*

DATES: *Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before July 5, 2011 to be considered in the formulation of a final plan.

ADDRESSES: Submit comments identified by Regulatory Burden; Federal Acquisition Regulatory Council Retrospective Review Under Executive Order 13563 Preliminary Plan by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting the document title under the heading "Enter Keyword or ID" and selecting "search." Select the link "Submit a Comment" that corresponds with "FAR Council's Plan for Retrospective Review under Executive Order 13563—Preliminary Plan." Follow the instructions provided to complete the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Council's Plan for Retrospective Review under Executive Order 13563—Preliminary Plan" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., 7th floor, ATTN: Hada Flowers, Washington, DC 20417.

Instructions: Please submit comments only and cite the "FAR Council's Plan for Retrospective Review under Executive Order 13563—Preliminary Plan" in all correspondence related to this case. 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: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Julia Wise, Procurement Policy Analyst at (202) 395–7561 or *jwise@omb.eop.gov.* Please cite the "FAR Council's Plan for Retrospective Review under Executive Order 13563—Preliminary Plan."

SUPPLEMENTARY INFORMATION: On January 18, 2011, the President signed E.O. 13563, "Improving Regulation and Regulatory Review," published in the **Federal Register** at 76 FR 3821 on January 21, 2011, which states that agencies must consider costs and benefits of their regulations and choose the least burdensome path. Agencies are required to coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.

Section 6 of E.O. 13563 emphasizes the importance of retrospective analysis of rules and requires agencies to develop a plan, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, expanded, streamlined, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Request for Comments

The FAR Council invites public comments on its plans for retrospective analysis. The Council's plan has tentatively identified eight priority initiatives for new or continued retrospective analysis and follow-up action over the next two years. These initiatives include—

1. Re-examining FAR Council process for applying new regulatory requirements to commercial item acquisitions & small (simplified) purchases;

2. Exploring opportunities to accelerate payments to small businesses;

3. Reviewing rules governing communications with vendors before awarding contracts;

4. Reducing number of competitions that result in only one offer;

5. Revisiting the process for reviewing past performance information;

6. Working with SBA to modernize rules for using contract set-asides and small business subcontracting plans;

7. Restructuring rules addressing conflicts of interest; and

8. Clarifying rules addressing the use of competition for Blanket purchase agreements.

The FAR Council welcomes comments on its preliminary plan and the initiatives discussed therein. The FAR Council further invites comments about any additional regulations, other than those listed in the preliminary plan, that should be modified, expanded, streamlined, or repealed in order to make the FAR more effective or less burdensome or both.

The FAR Council advises that this notice and request for comments is issued for information and policy development purposes. Although the FAR Council encourages responses to this notice, such comments do not bind the FAR Council to taking any further actions related to the submission.

Dated: May 31, 2011.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy, General Services Administration.

[FR Doc. 2011–13835 Filed 6–2–11; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register
Vol. 76, No. 107
Friday, June 3, 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

Forest Service

RIN 0596–AC77

National Forest System Invasive Species Management Policy

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed directive; request for comment.

SUMMARY: The Forest Service is seeking comment on it's proposal to establish an internal directive to Forest Service Manual (FSM) 2900 for invasive species management. The proposed invasive species management directive will provide foundational comprehensive guidance for the management of invasive species on aquatic and terrestrial areas of the National Forest System (NFS). The directive articulates broad objectives, policies, responsibilities, and definitions for Forest Service employees and partners to more effectively communicate NFS invasive species management requirements at the local, regional, and national levels. The directive primarily serves to clarify and improve the understanding, scope, roles, principles, and responsibilities associated with NFS invasive species management for Forest Service employees and the public. This directive will increase Forest Service effectiveness when planning and implementing invasive species management activities; using a collaborative and holistic approach for protecting and restoring aquatic and terrestrial ecosystems from the impacts of invasive plants, pathogens, vertebrates, and invertebrates.

DATES: Comments must be received in writing by August 2, 2011.

ADDRESSES: Submit comments through the World Wide Web/Internet Web site *http://www.regulations.gov* or mail written comments to Director, Rangeland Management, Mailstop 1103, Forest Service, USDA, 1400 Independence Ave., SW., Washington, DC 20250–1103. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. Persons wishing to inspect the comments are encouraged to call ahead (202) 205–1049 to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Mike Ielmini, National Invasive Species Program Coordinator, National Forest System, USDA Forest Service, Mailstop 1103, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 205–1049.

SUPPLEMENTARY INFORMATION: The Forest Service is amending its directives by establishing a new title in the Forest Service Manual, FSM 2900—Invasive Species Management.

Background and Need for the Proposed Directive

Background for the Proposed Directive

The management of aquatic and terrestrial invasive species across the landscape is widely recognized, and the Forest Service has conducted invasive species management activities across many programs for decades. However, during the development of the *Forest Service National Strategy and Implementation Plan for Invasive Species Management* (2004), it was identified that the National Forest System lacked a comprehensive policy (Forest Service directive) to provide specific direction to the field on the management of a full suite of aquatic and terrestrial invasive species. The need for a consolidated stand-alone directive for NFS invasive species management operations was further identified as a limiting factor during the program performance review, as well as during an ongoing program audit by the USDA Office of Inspector General. These assessments highlighted that the invasive species issue was not well understood in some agency programs, and based on information gathered on NFS program activities and annual program performance there was a need to better describe the roles and responsibilities for various levels of agency staff and leadership to more effectively address invasive species threats impacting the National Forest System.

In addition to establishing this broad policy, the Agency is developing specific operational requirements, standards, criteria, and guidance for invasive species management operations through an accompanying handbook that will be issued through the Directives system. The process to develop this draft handbook has begun and public comment will be sought in the near future.

Need for the Proposed Directive

The proposed invasive species management directive will provide foundational, comprehensive guidance for the management of invasive species on aquatic and terrestrial areas of the National Forest System. The directive articulates objectives, policies, principles, and definitions for Forest Service employees and partners to more effectively communicate NFS invasive species management requirements at the local, regional, and national levels. The directive primarily serves to clarify and improve the understanding, scope, roles, principles, and responsibilities associated with NFS invasive species management for Forest Service employees and the public. The directive will increase Forest Service effectiveness when planning and implementing invasive species management activities; using a collaborative and holistic approach for protecting and restoring aquatic and terrestrial ecosystems from the impacts of invasive plants, pathogens, vertebrates, and invertebrates.

The proposed directive applies to all of the National Forest System's resource management programs. For example, it recognizes the need to integrate invasive species prevention, early detection and rapid response, control, restoration, cooperation, education and awareness, and mitigation activities across NFS resource management programs, Forest land use planning activities, project-level planning activities, and other NFS operations. By improving the overall NFS effectiveness against aquatic and terrestrial invasive species, the proposed directive will help the Forest Service to better manage healthy, resilient landscapes which will have greater capacity to survive natural disturbances and large scale threats to sustainability, especially under changing and uncertain future environmental conditions such as those driven by climate change and increasing human uses; a benefit for all

communities. Through the roles and responsibilities identified in the proposed directive, the Forest Service will be able to more effectively address invasive species in the conext of environmental issues such as adaptation to climate change, increasing wildfire risk, watershed restoration, fragmentation of habitats, loss of biodiversity, and human health concerns while engaging the public, including participation by underserved communities in these programs and benefits. The proposed directive strengthens the Agency's ability to communicate (outreach) invasive species management needs at the local, regional, and national levels by articulating objectives, policies, principles, and definitions of invasive species management for Agency employees and diverse partners. The proposed directive fosters a better understanding and collaboration among diverse interests among the local to national levels in order to: (a) Develop integrated pest management strategies, goals, objectives, and projects; (b) reduce the threat invasive species pose to local economies; and (c) increase support for and accomplishment of priority invasive species management projects threatening aquatic and terrestrial areas of the National Forest System and neighboring lands. This will increase the Agency's effectiveness when planning and implementing invasive species management activities as a tool for achieving sustainable management and providing a broad range of ecosystem services from NFS lands benefiting all communities. Implementation of the directive is projected to increase the amount of invasive species work planned and accomplished, increasing economic development opportunities and improving local economic stability, including job and contracting opportunities among small business entities, low-income and socially disadvantaged groups and communities.

Comments Being Sought

The Agency is specifically seeking comment on the following objectives or goals, policy or broad governing principles, and definitions.

Proposed Objectives or Goals.

Management activities for aquatic and terrestrial invasive species (including vertebrates, invertebrates, plants, and pathogens) will be based upon an integrated pest management approach on all areas within the National Forest System, and on areas managed outside of the National Forest System under the authority of the Wyden Amendment (Pub. L. 109–54, Section 434), prioritizing prevention and early detection and rapid response actions as necessary. All National Forest System invasive species management activities will be conducted within the following strategic objectives:

1. *Prevention.* Take proactive approaches to manage all aquatic and terrestrial areas of the National Forest System in a manner to protect native species and ecosystems from the introduction, establishment, and spread of invasive species. Prevention can also include actions to design public-use facilities to reduce accidental spread of invasive species, and actions to educate and raise awareness with internal and external audiences about the invasive species threat and respective management solutions.

2. *Early Detection and Rapid Response (EDRR).* Inventory and survey susceptible aquatic and terrestrial areas of the National Forest System so as to quickly detect invasive species infestations, and subsequently implement immediate and specific actions to eradicate those infestations before they become established and/or spread. Coordinate detection and response activities with internal and external partners to achieve an effective EDRR approach across all aquatic and terrestrial areas of the National Forest System. EDRR actions are grouped into three main categories: early detection, rapid assessment, and rapid response. EDRR systems will be consistent with guidance from the National Invasive Species Council, such as the 'Guidelines for Early Detection and Rapid Response'.

3. *Control and Management.* Conduct integrated invasive species management activities on priority aquatic and terrestrial areas of the National Forest System will be consistent with guidance from the National Invasive Species Council, such as the 'Control and Management Guidelines', to contain, reduce, and remove established infestations of aquatic and terrestrial invasive species, and to limit the adverse effects of those infestations on native species, human health, and other National Forest System resources.

4. *Restoration.* Pro-actively manage aquatic and terrestrial areas of the National Forest System to increase the ability of those areas to be self-sustaining and resistant (resilience) to the establishment of invasive species. Where necessary, implement restoration, rehabilitation, and/or revegetation activities following invasive species treatments to prevent or reduce the likelihood of the reoccurrence or spread of aquatic or terrestrial invasive species.

5. *Organizational Collaboration.* Cooperate with other federal agencies, state agencies, local governments, tribes, academic institutions, and the private sector to increase public awareness of the invasive species threat, and promote a better understanding of integrated activities necessary to effectively manage aquatic and terrestrial invasive species throughout the National Forest System. Coordinate National Forest System invasive species management activities with other Forest Service programs and external partners to reduce, minimize, or eliminate the potential for introduction, establishment, spread, and impact of aquatic and terrestrial invasive species. Coordinate and integrate invasive species research and technical assistance activities conducted by Forest Service Research and Development, and State and Private Forestry programs with National Forest System programs to increase the management effectiveness against aquatic and terrestrial invasive species infestations impacting or threatening the National Forest System.

Proposed Policy or Principles

The management of aquatic and terrestrial invasive species (including vertebrates, invertebrates, plants, and pathogens) will be based on an integrated pest management approach, throughout the National Forest System.

1. Initiate, coordinate, and sustain actions to prevent, control, and eliminate priority infestations of invasive species in aquatic and terrestrial areas of the National Forest System using an integrated pest management approach, and collaborate with stakeholders to implement cooperative invasive species management activities in accordance with law and policy.

2. When applicable, invasive species management actions and standards should be incorporated into resource management plans at the forest level, and in programmatic environmental planning and assessment documents at the regional or national levels.

3. Determine the vectors, environmental factors, and pathways that favor the establishment and spread of invasive species in aquatic and terrestrial areas of the National Forest System, and design management practices to reduce or mitigate the risk for introduction or spread of invasive species in those areas.

4. Determine the risk of introducing, establishing or spreading invasive species associated with any proposed

action, as an integral component of project planning and analysis, and where necessary provide for alternatives or mitigation measures to reduce or eliminate that risk prior to project approval.

5. Ensure that all Forest Service management activities are designed to minimize or eliminate the possibility of establishment or spread of invasive species on the National Forest System, or to adjacent areas. Integrate visitor use strategies with invasive species management activities on aquatic and terrestrial areas of the National Forest System. At no time are invasive species to be promoted or used in site restoration or re-vegetation work, watershed rehabilitation projects, planted for bio-fuels production, or other management activities on national forests and grasslands.

6. Use contract and permit clauses to require that the activities of contractors and permittees are conducted to prevent and control the introduction, establishment, and spread of aquatic and terrestrial invasive species. For example, where determined to be appropriate use agreement clauses to require contractors or permittees to meet Forest Service-approved vehicle and equipment cleaning requirements/standards prior to using the vehicle or equipment in the National Forest System.

7. Make every effort to prevent the accidental spread of invasive species carried by contaminated vehicles, equipment, personnel, or materials (including plants, wood, plant/wood products, water, soil, rock, sand, gravel, mulch, seeds, grain, hay, straw, or other materials).

a. Establish and implement standards and requirements for vehicle and equipment cleaning to prevent the accidental spread of aquatic and terrestrial invasive species on the National Forest System or to adjacent areas.

b. Make every effort to ensure that all materials used on the National Forest System are free of invasive species and/or noxious weeds (including free of reproductive/propagative material such as seeds, roots, stems, flowers, leaves, larva, eggs, veligers, and so forth).

8. Where States have legislative authority to certify materials as weed-free (or invasive-free) and have an active State program to make those State-certified materials available to the public, forest officers shall develop rules restricting the possession, use, and transport of those materials unless proof exists that they have been State-certified as weed-free (or invasive-free), as provided in 36 CFR part 261.

9. Monitor all management activities for potential spread or establishment of invasive species in aquatic and terrestrial areas of the National Forest System.

10. Manage invasive species in aquatic and terrestrial areas on the National Forest System using an integrated pest management approach to achieve the goals and objectives identified in Forest Land and Resource Management plans, and other Forest Service planning documents, and other plans developed in cooperation with external partners for the management of natural or cultural resources.

11. Integrate invasive species management funding broadly across a variety of National Forest System programs, while associating the funding with the specific aquatic or terrestrial invasive species that is being prioritized for management, as well as the purpose and need of the project or program objective.

12. Develop and utilize site-based and species-based risk assessments to prioritize the management of invasive species infestations in aquatic and terrestrial areas of the National Forest System. Where appropriate, use a structured decision-making process and adaptive management or similar strategies to help identify and prioritize invasive species management approaches and actions.

13. Comply with the Forest Service performance accountability system requirements for invasive species management to ensure efficient use of limited resources at all levels of the Agency and to provide information for adapting management actions to meet changing program needs and priorities. When appropriate, utilize a structured decision-making process to address invasive species management problems in changing conditions, uncertainty, or when information is limited.

14. Establish and maintain a national record keeping database system for the collection and reporting of information related to invasive species infestations and management activities, including invasive species management performance, associated with the National Forest System. Require all information associated with National Forest System invasive species management (including inventories, surveys, and treatments) to be collected, recorded, and reported consistent with national program protocols, rules, and standards.

15. Where appropriate, integrate invasive species management activities, such as inventory, survey, treatment, prevention, monitoring, and so forth, into National Forest System management programs. Use inventory and treatment information to help set priorities and select integrated management actions to address new or expanding invasive species infestations in aquatic and terrestrial areas of the National Forest System.

16. Assist and promote cooperative efforts with internal and external partners, including private, State, tribal, and local entities, research organizations, and international groups to collaboratively address priority invasive species issues affecting the National Forest System.

17. Coordinate as needed with Forest Service Research and Development and State and Private Forestry programs, other agencies included under the National Invasive Species Council, and external partners to identify priority/high-risk invasive species that threaten aquatic and terrestrial areas of the National Forest System. Encourage applied research to develop techniques and technology to reduce invasive species impacts to the National Forest System.

18. As appropriate, collaborate and coordinate with adjacent landowners and other stakeholders to improve invasive species management effectiveness across the landscape. Encourage cooperative partnerships to address invasive species threats within a broad geographical area.

Proposed Definitions

Adaptive Management. A system of management practices based on clearly identified intended outcomes and monitoring to determine if management actions are meeting those outcomes; and, if not, to facilitate management changes that will best ensure that those outcomes are met or reevaluated. Adaptive management stems from the recognition that knowledge about natural resource systems is sometimes uncertain.

Control. With respect to invasive species (plant, pathogen, vertebrate, or invertebrate species), control is defined as any activity or action taken to reduce the population, contain, limit the spread, or reduce the effects of an invasive species. Control activities are generally directed at established free-living infestations, and may not necessarily be intended to eradicate the targeted infestation in all cases.

Early Detection. The process of finding, identifying, and quantifying new, small, or previously unknown infestations of aquatic or terrestrial invasive species prior to (or in the initial stages of) its establishment as free-living expanding population. Early detection of an invasive species is

typically coupled with integrated activities to rapidly assess and respond with quick and immediate actions to eradicate, control, or contain it.

Eradication. With respect to invasive species (plant, pathogen, vertebrate, or invertebrate species), eradication is defined as the removal or elimination of the last remaining individual invasive species in the target infestation on a given site. It is determined to be complete when the target species is absent from the site for a continuous time period (that is, several years after the last individual was observed). Eradication of an infestation of invasive species is relative to the time-frame provided for the treatment procedures. Considering the need for multiple treatments over time, certain populations can be eradicated using proper integrated management techniques.

Integrated Pest Management (IPM). A pest (in this context an invasive species) control strategy based on the determination of an economic, human health, or environmental threshold that indicates when a pest population is approaching the level at which control measures are necessary to prevent a decline in the desired conditions (economic or environmental factors). In principle, IPM is an ecologically-based holistic strategy that relies on natural mortality factors, such as natural enemies, weather, and environmental management, and seeks control tactics that disrupt these factors as little as possible. Integrated pest management techniques are defined within four broad categories: (1) Biological, (2) Cultural, (3) Mechanical/Physical, and (4) Chemical techniques.

Invasive Species. Executive Order 13112 defines an invasive species as "an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health." The Forest Service relies on Executive Order 13112 to provide the basis for labeling certain organisms as invasive. Based on this definition, the labeling of a species as 'invasive' requires closely examining both the origin and effects of the species. The key is that the species must cause harm and be exotic to the ecosystem it has infested before we can consider labeling it as "invasive". Thus, native pests are not considered 'invasive", even though they may cause harm. Invasive species infest both aquatic and terrestrial areas and can be identified within any of the following four taxonomic categories: Plants, Vertebrates, Invertebrates, and Pathogens. Additional information on this definition can be found in Executive Order 13112.

Invasive Species Management. Activities to prevent, control, contain, eradicate, survey, detect, identify, inventory, and monitor invasive species; includes rehabilitation and restoration of affected sites and educational activities related to invasive species. Management actions are based upon species-specific or site-specific plans (including forest plans, IPM plans, watershed restoration plans, and so forth), and support the accomplishment of plan goals and objectives and achieve successful restoration or protection of priority areas identified in the respective plan(s).

Inventory. Invasive species inventories are generally defined as the observance and collection of information related to the occurrence, population or infestation of the detected species across the landscape or with respect to a more narrowly-defined area or site. Inventory attributes and purposes will vary, but are typically designed to meet specific management objectives which need information about the extent of an invasive species infestation. Inventories are typically conducted to quantify the extent of, and other attributes related to, infestations identified during survey activities.

Memorandum of Understanding. A written agreement between the Forest Service and local, State, or Federal entities, or private organizations, entered into when there is no exchange of funds from one organization to another.

Monitoring. For the purposes of invasive species program performance and accountability, the term "monitoring" refers to the observance and recording of information related to the responses to treating an invasive species infestation, and reported as treatment efficacy. By monitoring the treatment results over time, a measure of overall programmatic treatment efficacy can be determined and an adaptive management process can be used in subsequent treatment activities.

Noxious Weed. The term "Noxious Weed" is defined for the Federal government in the Plant Protection Act of 2000 and in some individual State statutes. For purposes of this chapter, the term has the same meaning as found in the Plant Protection Act of 2000 as follows: The term "noxious weed" means any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment. The term typically describes species of plants that have been determined to be undesirable or injurious in some capacity. Federal noxious weeds are regulated by USDA–Animal and Plant Health Inspection Service under the Plant Protection Act of 2000 which superseded the Federal Noxious Weed Act of 1974. State statues for noxious weeds vary widely, with some states lacking any laws defining or regulating noxious weeds. Depending on the individual State law, some plants listed by a State statute as "noxious" may be native plants which that state has determined to be undesirable. When the species are native they are not considered invasive species by the Federal government. However, in most cases, State noxious weed lists include only exotic (non-native) species.

Prevention. Prevention measures for invasive species management programs include a wide range of actions and activities to reduce or eliminate the chance of an invasive species entering or becoming established in a particular area. Preventative activities can include projects for education and awareness as well as more traditional prevention activities such as vehicle/equipment cleaning, boat inspections, or native plant restoration plantings. Restoration activities typically prevent invasive species infestations by improving site resilience, and reducing or eliminating the conditions on a site that may facilitate or promote invasive species establishment.

Priority Area Treated. Program or project plans (primarily at the district or forest level) will identify priority areas on which to focus integrated management actions to directly prevent, control, or eradicate a priority/high-risk aquatic or terrestrial invasive species. Priority areas indentified for invasive species treatments may include any specifically-delineated project area. Examples include, but are not limited to: a fuels treatment area, a developed recreation area, a transportation corridor, a facility, a sensitive habitat for rare species, a wetland, a river, a lake, a stream, an irrigation ditch, a grazing allotment, a stock pond, a fire camp, wildlife winter range, a burned area, a fire-break, a timber sale area, a wilderness area, a Research Natural Area, an energy transmission right of way, and so forth). The size of the priority area treated will typically be measured in acres. For linear features (such as a stream/river, trail, roadway, power-line, ditch, and so forth) the area size can be calculated from the length and average width. In some cases, a smaller portion of a delineated project area infested by invasive species may be prioritized for treatment over the larger

infestation. Guidance on determining and establishing priorities for invasive species management is provided in the Forest Service Invasive Species Management Handbook (FSH 2900).

Rapid Response. With respect to invasive species (plant, pathogen, vertebrate, or invertebrate species), rapid responses are defined as the quick and immediate actions taken to eradicate, control, or contain infestations that must be completed within a relatively short time to maximize the biological and economic effectiveness against the targeted invasive species. Depending on the risk of the targeted invasive species, rapid response actions may be supported by an emergency situation determination and emergency considerations would include the geographic extent of the infestation, distance from other known infestations, mobility and rate of spread of the invasive species, threat level and potential impacts, and available treatments.

Restored. With respect to performance specifically, the invasive species program is driven by an outcome-based performance measure centered on 'restoration'. An area treated (see "treatment" definition) against invasive species has been 'restored' when the targeted invasive species defined in the project plan was controlled or eradicated directly as a result of the treatment activity. In some instances, actions taken across particular areas to prevent the establishment and spread of specific invasive species are also included in this treatment definition. 'Restored' acres are a subset of 'treated' acres, which are tracked annually to determine the effectiveness of treatments. Preventing, controlling, or eradicating invasive species assists in the recovery of the area's resilience and the capacity of a system to adapt to change if the environment where the system exists has been degraded, damaged, or destroyed (in this case by invasive species); and helps to reestablish ecosystem functions by modifying or managing composition and processes necessary to make terrestrial and aquatic ecosystems sustainable, and resilient, under current and future conditions (as described in FSM 2020). In most cases, this is a performance measure defined in the project plan, and project managers have the flexibility to set the parameters for determining when the treated areas have been restored. Absence of an individual invasive species organism, whether through eradication or prevention efforts, is most often the criteria used to determine when acres have been restored. Monitoring treatment efficacy is critical to reporting invasive species management performance.

Resilience. The capacity of an ecosystem to absorb disturbance and reorganize while undergoing change, so as to still retain essentially the same function, structure, identity, and feedbacks. By working toward the goals of diverse native ecosystems that are connected and can absorb disturbance, it is expected that over time, management would create ecological conditions that support the abundance and distribution of native species within a geographic area to provide for native plant and animal diversity.

State Agency. A State Department of Agriculture, State Department of Natural Resources, other State agency, or subdivision thereof, responsible for the administration or implementation of State laws pertaining to invasive species, noxious weeds, exotic species, or other pest/undesirable species.

Structured Decision Making (SDM). A general term for carefully-organized analysis of problems in order to reach decisions that are focused clearly on achieving fundamental objectives. Based in decision theory and risk analysis, SDM encompasses a simple set of concepts and helpful steps, rather than a rigidly-prescribed approach for problem solving. Key SDM concepts include making decisions based on clearly articulated fundamental objectives, dealing explicitly with uncertainty, and responding transparently to legal mandates and public preferences or values in decision making; thus, SDM integrates science and policy explicitly. Every decision consists of several primary elements, management objectives, decision options, and predictions of decision outcomes. By analyzing each component separately and thoughtfully within a comprehensive decision framework, it is possible to improve the quality of decision-making. The core SDM concepts and steps to better decision making are useful across all types of decisions: from individuals making minor decisions to complex public sector decisions involving multiple decision makers, scientists and other stakeholders.

Survey. An invasive species survey is a process of systematically searching a geographic area for a particular (targeted) invasive species, or a group of invasive species, to determine if the species exists in that area. It is important to know where and when surveys have occurred, even if the object of the survey (target species) was not located. Information on the absence of an invasive species can be as valuable as information on the presence of the species, and can be used as a foundation to an early detection system. Unlike inventories, surveys typically do not collect additional detailed attributes of the infestation or the associated site.

Targeted Invasive Species. An individual invasive species or population of invasive species, which has been prioritized at the project-level for management action based upon risk assessments, project objectives, economic considerations, and other priority-setting decision support tools.

Treatment. Any activity or action taken to directly prevent, control, or eradicate a targeted invasive species. Treatment of an invasive species infestation may not necessarily result in the elimination of the infestation, and multiple treatments on the same site or population are sometimes required to affect a change in the status of the infestation. Treatment activities typically fall within any of the four general categories of integrated management techniques: Biological treatments, Cultural treatments, Mechanical treatments, or Chemical treatments. For example, the use of domestic goats to control invasive plants would be considered a biological treatment; the use of a piscicide to control invasive fishes would be characterized as a chemical treatment; planting of native seeds used to prevent invasive species infestations and restore a degraded site would be considered a cultural treatment technique; developing an aquatic species barrier to prevent invasive species from spreading throughout a watershed would be considered a physical treatment; cleaning, scraping, or otherwise removing invasive species attached to equipment, structures, or vehicles would be considered a mechanical treatment designed to directly control and prevent the spread of those species.

Regulatory Certifications

Environmental Impact

The proposed directive establishes broad, foundational policy for invasive species management on the National Forest System and associated resources. Agency procedure at 36 CFR 220.6(d)(2) (73 FR 43093) excludes from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The Agency has concluded that the proposed directive falls within this category of actions and that no extraordinary circumstances exist which would require preparation

of an environmental assessment or environmental impact statement.

Regulatory Impact

This proposed directive has been reviewed under USDA procedures and *Executive Order 12866, Regulatory Planning and Review.* It has been determined that this is not an economically significant action. This action to issue agency policy will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments. This action will not interfere with an action taken or planned by another agency. This action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because of the extensive interest in the management of National Forest System land, this proposed agency directive has been designated as significant and, therefore, is subject to Office of Management and Budget review under Executive Order 12866.

This proposed directive has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). A small enitities flexibility assessment has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA. This proposed directive is focused on National Forest System invasive species management activities, is not a regulation, and imposes no requirements on small or large entities. Addtionally, the proposed directive will increase agency effectiveness when planning and implementing invasive species management activities at the local level and, in turn, will provide opportunities to facilitate economic development for local communities and provide job opportunities for small business entities or individuals.

This proposed directive is consistent with the terminology and requirements identified in Executive Order 13112 on invasive species, and correlates the Forest Service roles and responsibilities with the goals, objectives, and priority actions to manage invasive species identified in the National Invasive Species Council's National Invasive Species Management Plan (2001 and 2008–2012, as amended).

Federalism

The Agency has considered this proposed directive under the requirements of Executive Order 13132, Federalism. The Agency has concluded that the proposed directive conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

Consultation and Coordination With Indian Tribal Governments

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," the Agency has assessed the impact of this proposed directive on Indian Tribes and has determined that it does not have substantial direct or unique effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The proposed directive does not have tribal implications, affect the rights of Indian tribes to self-governance, and does not impact tribal sovereignty or self-determination. Specifically, the proposed directive represents a compilation and consolidation of existing invasive species management authorities, roles, and responsibilities focused on the duties of Forest Service personnel on the National Forest System, and does not impose substantial direct compliance costs on Indian tribal governments or preempt tribal law. Therefore, after discussions and coordination with the Forest Service Office of Tribal Relations and regional Forest Service tribal coordinators regarding this proposed directive, the Agency has determined that formal consultation with Tribal governments on this proposed directive is unnecessary prior to publishing this proposed directive in the **Federal Register**.

Implementation of this directive primarily occurs at the local level (national forest or grassland unit) through land management planning and project-level planning and accomplishment. Therefore, coordination with Tribes, other governmental organizations, and the public is most applicable at the forest and grassland level because it is at that level that specific invasive species management goals and objectives are established. Also, at that level the design and effects of invasive species management activities are most effectively managed in relation to the Agency's tribal trust responsibilities and Indian tribal treaty rights.

In addition, during the review and coordination with the Forest Service Office of Tribal Relations, it was agreed that the Agency would coordinate an outreach effort through the respective regional OTR directors/staff regarding the future development of the Forest Service Handbook for NFS Invasive Species Management; inviting additional review and collaboration with interested Tribal governments during that process. This future Forest Service Handbook on Invasive Species Management would tier directly from this proposed [final] directive and would provide the detailed operational requirements, standards, criteria, and guidance which would be most applicable to Tribal government interests.

No Takings Implications

This proposed directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the proposed directive does not pose the risk of a taking of protected private property.

Civil Justice Reform

This proposed directive has been reviewed under Executive Order 12988 of February 7, 1996, "Civil Justice Reform." After adoption of this proposed directive, (1) All state and local laws and regulations that conflict with this proposed directive or that would impede full implementation of this directive would be preempted; (2) no retroactive effect would be given to this proposed directive; and (3) the proposed directive would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Agency has assessed the effects of this proposed directive on State, local, and Tribal governments and the private sector. This proposed directive does not compel the expenditure of funds by any

State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Energy Effects

This proposed directive has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed directive does not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

This proposed directive does not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use, and therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: May 27, 2011.

Mary Wagner,

Associate Chief.

[FR Doc. 2011–13800 Filed 6–2–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Pacific Halibut Fisheries: Charter Recordkeeping.

OMB Control Number: 0648–0575.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 1,909.

Average Hours per Response: 4 minutes.

Burden Hours: 2,415.

Needs and Uses: This request is for an extension of a currently approved information collection.

Pacific halibut is an unusual resource in that halibut management in both state and federal waters is an international and federal responsibility under the North Pacific Halibut Act of 1982. Annual catch quotas are determined by the International Pacific Halibut Commission (IPHC), and federal responsibility for halibut management extends to halibut stocks and fishing activity within State of Alaska waters. In order to manage halibut effectively, international and federal managers need information on halibut fishing effort and harvest by all user groups, including the guided sport charter sector of the fishery.

In order to minimize the recordkeeping and reporting burden on guided charter operations, federal and international managers depend on fishing activity and harvest information collected by the State of Alaska through its charter logbook program. Federal regulations at 50 CFR 300.65 require charter vessel operators fishing in IPHC Areas 2C and 3A to comply with the State of Alaska logbook reporting requirements.

The State of Alaska Department of Fish and Game (ADF&G) Division of Sport Fish initiated a mandatory logbook program for charter vessels in 1998 requiring annual registration of sport fishing guides and businesses and logbook reporting. The logbook and registration program was intended to provide information on actual participation and harvest by individual charter vessels and businesses in various regions of the state.

ADF&G issues charter logbooks to licensed businesses only and also provides operators with registration stickers and statistical area maps. A schedule of logbook due dates is printed inside the front cover of each logbook.

NMFS and ADF&G coordinated closely in the development of this information collection to use the existing ADF&G logbook to record information necessary for the monitoring and enforcement of the charter vessel angler daily catch limit of halibut, so that a separate federal logbook system would not be necessary. This approach reduces burden to both the charter vessel industry, and federal and state management agencies.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: May 31, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–13810 Filed 6–2–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Application for the President's "E" and "E STAR" Awards for Export Expansion

AGENCY: International Trade Administration, Department of 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 August 2, 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 Laura Barmby, *Laura.Barmby@trade.gov,* phone 202–482–2675, fax 202–482–6902.

SUPPLEMENTARY INFORMATION:

I. Abstract

The President's "E" Award for Excellence in Exporting is our nation's highest award to honor American exporters. "E" Awards recognize persons, firms, and organizations making significant contributions to the increase of American exports. The President's "E STAR" Award recognizes the sustained superior international

marketing performance of "E" Award winners.

II. Method of Collection

The application form is available on the Internet. Applicants are required to submit one electronic version and one hard copy to their local U.S. Export Assistance Center.

III. Data

OMB Control Number: 0625–0065.

Form Number(s): ITA–725P.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 30.

Estimated Time per Response: 15 hours.

Estimated Total Annual Burden Hours: 450.

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: May 27, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–13760 Filed 6–2–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–866]

Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

FOR FURTHER INFORMATION CONTACT: Justin Neuman or Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0486 and (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 2011, the Department of Commerce (the Department) initiated the countervailing duty investigation of bottom mount combination refrigerator-freezers from the Republic of Korea. *See Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Initiation of Countervailing Duty Investigation,* 76 FR 23298 (April 26, 2011). Currently, the preliminary determination is due no later than June 23, 2011.

Postponement of Due Date for the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, the Department may postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation if, among other reasons, the petitioner makes a timely request for an extension pursuant to section 703(c)(1)(A) of the Act. In the instant investigation, the petitioner, Whirlpool Corporation, made a timely request on May 9, 2011, requesting a postponement of the preliminary countervailing duty determination to 130 days from the initiation date. *See* 19 CFR 351.205(e) and the petitioner's May 9, 2011, letter requesting postponement of the preliminary determination, which is available in the Central Records Unit, Room 7046 in the Department's main building.

The Department finds no compelling reason to deny the request. Therefore, pursuant to section 703(c)(1)(A) of the Act, we are extending the due date for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.,* to August 27, 2011. However, August 27, 2011 falls on a Saturday. It is the Department's long-standing practice to make a determination on the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005). Accordingly, the Department will make its preliminary determination on August 29, 2011, the first business day after August 27, 2011.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(l).

Dated: May 26, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–13818 Filed 6–2–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Saltwater Sportfishing Economic Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 2, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection

instrument and instructions should be directed to Dr. Dan Lew, (530) 752–1746 or *Dan.Lew@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

The National Marine Fisheries Service (NMFS) plans to conduct a survey to collect data for conducting economic analyses of marine sport fishing in Alaska. This survey is necessary to understand the factors that affect the economic value of marine recreational fishing trips and improve estimates of fishing trip value.

The Federal Government is responsible for the management of the Pacific halibut sport fishery off Alaska, while the State of Alaska manages the salmon sport fisheries (chinook, coho, sockeye, chum and pink), as well as several other saltwater sport fisheries. The survey's scope covers marine sport fishing for Pacific halibut, salmon, and other popular marine sport species in Alaska (*e.g.,* lingcod and rockfish). The data collected from the survey will be used to estimate the demand for and value of marine fishing to anglers and to analyze how the type of fish caught, fishery regulations, and other factors affect fishing values and anglers' decisions to participate in Alaska marine fishing activities. The economic information provided from the survey will update and augment information collected in an earlier survey conducted in 2007 and is necessary to help inform fishery managers about the economic values of Alaska marine sport fisheries and the changes to participation in these fisheries with proposed regulations.

II. Method of Collection

The survey will be administered as a mixed-mode survey employing both mail and telephone methods. A prepaid return envelope will be provided to respondents receiving the survey by mail.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 4,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 2,000.

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: May 31, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–13811 Filed 6–2–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XA468]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a three-day meeting on Tuesday through Thursday, June 21–23, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, Wednesday and Thursday, June 21–23 starting at 9 a.m. on Tuesday and 8:30 a.m. on Wednesday and Thursday.

ADDRESSES: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone (207) 775–2311; fax: (508) 761–8224. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, June 21, 2011

Following introductions and any announcements, the Council will receive brief reports from the Council Chairman and Executive Director, the NOAA Fisheries Regional Administrator, Northeast Region, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel, representatives of the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission, as well as NOAA Enforcement/VMS representatives. Prior to a review of any experimental fishery permit applications that have been received since its last meeting, the Council will discuss its press policies. A representative of the U.S. Navy will then will update the Council on its operations and training activities in the North Atlantic. An open public comment period is scheduled prior to a lunch break for any interested party who may wish to provide brief comments on issues relevant to Council business but not otherwise listed on the meeting agenda. Following the break, the Council will receive a presentation about and comment on possible revisions to the National Standard Guideline 10 (NS10. NS10 is the primary source of guidance for safety issues in fishery management regulations. The Council's Enforcement Committee also will provide comments on NS10 and on NOAA's enforcement priority-setting process. The committee also may comment on several sea scallop measures that may be included in Framework Adjustment 23 to the Scallop Fishery Management Plan (FMP). Under this agenda item the Coast Guard also may report on its initiative to improve compliance with and the effectiveness of Northeast Multispecies FMP regulations. At the end of the day the Council will consider several cooperative research issues, including the disposition of catch on scientific research cruises and how that catch is accounted for in estimates of fishing mortality. Council members also will comment on the NMFS Strategic Plan for Cooperative Research in the Northeast and provide updated information and alternatives that may assist the agency in revising its programs. NOAA/NMFS staff also will hold a public session in the Council meeting room from 5:30–7:30 for

stakeholders and anyone who would like to comment, discuss ideas, critique or provide new information that may be considered in possible revisions to the strategic plan.

Wednesday, June 22, 2011

NOAA's Northeast Fisheries Science Center staff will present an overview of its interim report on *The Performance of the Northeast Multispecies (Groundfish) Fishery,* May 2010–January 2011, with a question and answer period to follow. The Council's Groundfish Committee will discuss possible revisions to the groundfish gear policy and provide an update on the development of Framework Adjustment 47 to the Groundfish FMP. The Council intends to approve Amendment 17 to the FMP to authorize state permit banks and will receive a report about the recent workshop on accumulation limits in the groundfish fishery. Following a lunch break, there will be an update about further work on Essential Fish Habitat Omnibus 2. The Council also will receive an update on alternatives that may be included in Framework Adjustment 23 to the Scallop FMP. The day will conclude with a report from the Monkfish Committee on a white paper that discusses pros and cons of reorganizing the FMP in various forms and according to the fishery operations in the Northern and Southern Fishery Management Areas. The committee also will ask the Council for further guidance on the development of Amendment 6 to the Monkfish FMP, an action that may include some type of catch share management.

Thursday, June 23, 2011

The final day of the Council meeting will begin with a discussion of an April 2011 report commissioned by NMFS that reviewed the fisheries management process in the Northeast in the context of the effectiveness of the relationship among Council, the NMFS Regional Office and the Northeast Fisheries Science Center. The Scientific and Statistical Committee (SSC) will provide an overview of the method and process, and any alternatives, that may be used to set 2012–2014 acceptable biological catches (ABCs) for all groundfish stocks. The SSC also will present an acceptable biological catch (ABC) recommendation for the skate complex for fishing years 2012–2013. Before adjournment, the Council also may approve skate management measures that will be included in the 2012–2013 specifications package or could identify management alternatives and initiate Framework adjustment 2 to the Skate Complex FMP.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 31, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–13763 Filed 6–2–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA467

Endangered Species; File No. 15677

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that South Carolina Department of Natural Resources (hereinafter "Permit Holder"), P.O. Box 12559 Charleston, SC 29422 [Responsible Party: William C. Post], has been issued a permit to take shortnose sturgeon for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

- Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and
- Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Colette Cairns, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On November 30, 2010, notice was published in the **Federal Register** (75 FR 74003) that a scientific research permit to take shortnose sturgeon had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The South Carolina Department of Natural Resources (SCDNR) is authorized to conduct a five-year scientific study assessing the presence, abundance, and distribution of shortnose sturgeon in South Carolina waters (Savannah, ACE Basin, including the Ashepoo, Combabee and Edisto Rivers, Cooper, and Santee Rivers, Lake Marion and its tributaries, and the Winyah Bay system, including the Black, Waccamaw, Sampit, Little Pee Dee and Great Pee Dee Rivers), each to the first impassible dam. The SCDNR will also specifically assess shortnose sturgeon usage of the upper Santee River Basin (Wateree, Saluda, and Congaree Rivers) as part of two Federal Energy Regulatory Commission (FERC) relicensing projects: the Duke Energy Catawba Wateree and the SCANA Services Saluda Hydroelectric Projects.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) Was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 27, 2011.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–13842 Filed 6–2–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ51

Marine Mammals; File No. 15543

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Randall S. Wells, Ph.D. (Principal

Investigator), Sarasota Dolphin Research Program, c/o Mote Marine Laboratory, 1600 Ken Thompson Parkway, Sarasota, FL 34236, has been issued a permit to conduct research on bottlenose dolphins (*Tursiops truncatus*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Carrie Hubard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On October 19, 2010, notice was published in the **Federal Register** (75 FR 64247) that a request for a permit to conduct research on bottlenose dolphins had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit authorizes annual takes of up to 15,050 animals for photo-identification and behavioral studies and remote biopsy sampling of up to 100 individual dolphins. Fifty dolphins a year may be captured, examined, sampled, tagged, marked, and released for health assessment studies. Research may occur in the shallow inshore and coastal waters of west Florida out to 50 miles offshore, with a focus along the central west coast, from Clearwater southward to Fort Myers. Females with calves less than one year old will not be captured. The research will provide crucial background information population structure, dynamics, life history, social structure, genetic structure including paternity patterns, and human interactions. The sampling and tagging will support health assessment, auditory system, feeding, and ranging pattern studies. Research will also include assessments of oil spill impacts at individual and population levels. Permit No. 15543 expires on June 1, 2016.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: May 26, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–13840 Filed 6–2–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds 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 deletes a product and services from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 7/4/2011.

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 CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 3/11/2011 (76 FR 13362–13363); 3/25/2011 (76 FR 16733–16734); 4/1/2011 (76 FR 18188–18189); and 4/8/2011 (76 FR 19750–19751), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

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. 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. 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.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

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.
NSN: PGC496—Shirt, Winter Dress, USCG, Unisex, Long Sleeve, Blue, PGC 496.
NPA: Oswego Industries, Inc., Fulton, NY.
Contracting Activity: Department Of Homeland Security, U.S. Coast Guard, HQ Contract Operations (CG–912), Washington, DC.
Coverage: C-List for 100% of the requirement of the U.S. Coast Guard, as aggregated by the U.S. Coast Guard.
NSN: 5315–00–598–5916—Cotter Pin Assortment.
NPA: Good Vocations, Inc., Macon, GA.
Contracting Activity: General Services Administration, Fort Worth, TX.
Coverage: B-List for the Broad Government requirement as aggregated by the General Services Administration.

Services

Service Type/Location: Janitorial Service, US Army Corps of Engineers Records Holding Area (RHA), Transatlantic Programs Center, 188 Brooke Road, Winchester, VA.
NPA: NW Works, Inc., Winchester, VA
Contracting Activity: Dept of the Army, W31R Endiv Transatlantic, Winchester, VA.
Service Type/Location: Central Issue Facility Service, Fort Hood, Texas.
NPA: Skookum Educational Programs, Bremerton, WA.
Contracting Activity: Dept of the Army,

W6QM Ft Sam Houston Contr Ctr, Fort Sam Houston, TX.

Deletions

On 3/25/2011 (76 FR 16733–16734) and 4/8/2011 (76 FR 19750–19751), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

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. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. 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 deleted from the Procurement List.

End of Certification

Accordingly, the following product and services are deleted from the Procurement List:

Product

NSN: 1560–00–870–1656—Cover Access.
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
Contracting Activity Defense Logistics Agency Aviation, Richmond, VA.

Services

Service Types/Locations: Janitorial/Custodial, Veterans Integrated Support Network 16, Ridgeland, MS.
Administrative Services, Veterans Affairs Medical Center, 500 East Woodrow Wilson Drive, Jackson, MS.
NPA: Goodwill Industries of Mississippi, Inc., Ridgeland, MS.
Contracting Activity: Department of Veterans Affairs, NAC, Hines, IL.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–13799 Filed 6–2–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: 7/4/2011.

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: Barry S. Lineback, 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 service 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 service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and service 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 service 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 service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: 5340–00–NIB–0079—Notebook Computer Combination Lock.
NSN: 5340–00–NIB–0099—Desktop & Peripherals Locking Kit, Standard.
NPA: Alphapointe Association for the Blind, Kansas City, MO.
Contracting Activity: General Services Administration, Fort Worth, TX.
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.
NSN: M.R. 301—Silicone Spatula.
NSN: M.R. 302—Silicone Batter Spoon.
NSN: M.R. 303—Silicone Whisk.
NSN: M.R. 304—Silicone Tong w/Locking Handle.
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.

Service

Service Type/Location: Janitorial Service, Norman Military Complex (excluding Norman Armed Force Reserve Center), Norman, OK.
NPA: Dale Rogers Training Center, Inc., Oklahoma City, OK.
Contracting Activity: Dept of the Army, W7NV USPFO Activity OK ARNG, Oklahoma City, OK.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–13798 Filed 6–2–11; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, June 8, 2011; 10 a.m.–11 a.m.

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: June 1, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–13894 Filed 6–1–11; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement for the St. Lucie South Beach and Dune Restoration Project Located in St. Lucie County, Florida

AGENCY: U.S. Army Corps of Engineers, DoD.

Cooperating Agency: The Bureau of Ocean Energy, Management, Regulation and Enforcement (BOEMRE) is a cooperating federal agency having jurisdiction by law because the proposed federal action includes potential future use of beach compatible sand originating from the outer continental shelf.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (USACE) is issuing this notice to advise the public that a Draft Environmental Impact Statement (DEIS) has been completed and is available for review and comment.

DATES: In accordance with the National Environmental Policy Act (NEPA), we have filed the DEIS with the U.S. Environmental Protection Agency (EPA) for publication of their notice of availability in the **Federal Register**. The EPA notice officially starts the 45-day review period for this document. It is the goal of the USACE to have this notice published on the same date as the EPA notice. However, if that does not occur, the date of the EPA notice will determine the closing date for comments on the DEIS. Comments on the DEIS must be submitted to the address below under Further Contact Information and must be received no later than 5 p.m. Eastern Standard Time, Monday, July 18, 2011.

Scoping: A Scoping Meeting was held in Ft. Pierce, FL on May 19th to gather information for the preparation of the DEIS. A Public notice was posted in a St. Lucie County newspaper, and mailed to current stakeholder lists with notification of the public meetings and requesting input and comments on issues that should be addressed in the DEIS.

A public meeting for this DEIS will be held on Wednesday, June 29, 2011 from 6 to 8:30 p.m. at the St. Lucie County Commission Chambers, Roger Poitras Administration Annex, 2300 Virginia Ave., Ft. Pierce, FL 34982. The purpose of this public meeting is to provide the public the opportunity to comment, either orally or in writing, on the DEIS. Notification of the meeting will be announced following same format as the Scoping Meetings announcements.

ADDRESSES: The DEIS is available online on the Jacksonville District Web site at: *http://www.saj.usace.army.mil/Divisions/Regulatory/interest.htm.* Copies of the DEIS are also available for review at the following libraries:

1. St. Lucie County Administration Building, 2300 Virginia Ave., Fort Pierce, FL 34982.
2. St. Lucie County Ft. Pierce Branch Library 101 Melody Lane, Fort Pierce, 34950.
3. St. Lucie County Lakewood Park Branch Library 7605 Santa Barbara Drive, Fort Pierce, 34951.
4. St. Lucie West Library J Building, 500 N.W. California Blvd., Port St. Lucie, 34986.
5. USACE Palm Beach Gardens Regulatory Office, 4400 PGA Boulevard, Suite 500 Palm Beach Gardens, Florida 33410.

FOR FURTHER INFORMATION CONTACT: Ms. Leah Oberlin, Chief, Palm Beach Gardens Section, U.S. Army Corps of Engineers, Jacksonville District, 4400 PGA Boulevard, Suite 500, Palm Beach Gardens, FL 33410, *Telephone:* 561–472–3517, *Fax:* 561–626–6971.

SUPPLEMENTARY INFORMATION: The project is being reviewed under Department of the Army permit application number SAJ–2009–03448(IP–GGL). The primary Federal involvement associated with the Proposed Action is the dredging and discharge of fill within navigable waters of the United States pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

The project is located on South Hutchinson Island in St. Lucie County and is approximately 3.8 miles in length. The project coincides approximately with Florida Department of Environmental Protection Shoreline Monuments R–88.5 to R–90.3, and R–98 to the St. Lucie/Martin County line. The northern limit of the project is approximately 6,000 feet south of the Hutchinson Island Nuclear Plant. The project was proposed by the St. Lucie County Erosion District (applicant) to stabilize the beach and dune to protect essential upland infrastructure, upland property, expand turtle nesting habitat, and increase recreational opportunities. The applicant's preference is to utilize a hopper dredge to obtain 610,000 cubic yards of beach compatible sand from a borrow area approximately 3.0 miles offshore of St. Lucie County. The hopper dredge would deliver the sand by hydraulic pumping onto the project beach. The applicant has stated the project was anticipated to adversely affect approximately 1.08 acres of near-shore hard bottom habitat through direct burial.

Because of the extensive hard bottom resources immediately adjacent to the beach, the high recreational uses of the project area, and the potential environmental impacts of the proposed project, the USACE is preparing the EIS for compliance with the National Environmental Policy Act (NEPA) to render a final decision on the applicant's permit application. The USACE's decision will be to either issue or deny a Department of the Army permit for the Proposed Action. The DEIS discloses alternatives to the proposed action, and the anticipated environmental effects on the human environment resulting from St. Lucie County Erosion Districts' proposal to construct the project and other reasonable alternatives.

The DEIS reviews the purpose and need for this project. All reasonable alternatives will be considered, including the no-action alternative. This DEIS evaluates the environmental effects of 7 alternatives including the applicant's preferred alternative described above, 5 additional alternatives that include varying degrees of beach and/or dune fill and hardbottom impacts, an alternative that includes beach and dune fill with stabilization structures (T-head groins), and the no-action alternative.

Dated: May 24, 2011.

Donald W. Kinard,

Deputy Chief, Regulatory Division.

[FR Doc. 2011–13836 Filed 6–2–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Investing in Innovation Fund

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information: Investing in Innovation Fund; notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.411A (Scale-up grants).

DATES: *Applications Available:* June 6, 2011.

Deadline for Notice of Intent To Apply: June 23, 2011.

Deadline for Transmittal of Applications: August 2, 2011.

Deadline for Intergovernmental Review: October 3, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Investing in Innovation Fund, established under section 14007 of the American Recovery and Reinvestment Act of 2009 (ARRA), provides funding to support (1) local educational agencies (LEAs), and (2) nonprofit organizations in partnership with (a) one or more LEAs or (b) a consortium of schools. The purpose of this program is to provide competitive grants to applicants with a record of improving student achievement and attainment in order to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth (as defined in this notice), closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

These grants will (1) Allow eligible entities to expand and develop innovative practices that can serve as models of best practices, (2) allow eligible entities to work in partnership with the private sector and the philanthropic community, and (3) support eligible entities in identifying and documenting best practices that can be shared and taken to scale based on demonstrated success.

Under this program, the Department awards three types of grants: "Scale-up" grants, "Validation" grants, and "Development" grants. Applicants must specify the type of grant they are seeking at the time of application. Among the three grant types, there are differences in terms of the evidence that an applicant is required to submit in support of its proposed project; the expectations for "scaling up" successful projects during or after the grant period, either directly or through partners; and the funding that a successful applicant is eligible to receive. This notice invites applications for Scale-up grants. Notices inviting applications for Validation and Development grants are published elsewhere in this issue of the **Federal Register**.

Scale-up grants provide funding to "scale up" practices, strategies, or programs for which there is *strong evidence* (as defined in this notice) that the proposed practice, strategy, or program will have a statistically significant effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates, and that the effect of implementing the proposed practice, strategy, or program will be substantial and important. An applicant for a Scale-up grant may also demonstrate success through an intermediate variable strongly correlated with these outcomes, such as teacher or principal effectiveness.

An applicant for a Scale-up grant must estimate the number of students to be reached by the proposed project and provide evidence of its capacity to reach the proposed number of students during the course of the grant. In addition, an applicant for a Scale-up grant must provide evidence of its capacity (*e.g.,* qualified personnel, financial resources, management capacity) to scale up to a State, regional, or national level, working directly or through partners either during or following the grant period. We recognize that LEAs are not typically responsible for taking to scale their practices, strategies, or programs in other LEAs and States. However, all applicants, including LEAs, can and should partner with others (*e.g.,* State educational agencies) to disseminate and take to scale their effective practice, strategy, or program.

The Department will screen applications that are submitted for Scale-up grants in accordance with the requirements in this notice, and determine which applications have met the eligibility and other requirements in the notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 12, 2010 (75 FR 12004–12071) (2010 i3 NFP). Peer reviewers will review all eligible Scale-up grant applications. However, if the Department determines that an application for a Scale-up grant does not meet the definition of *strong evidence* in this notice, or any other eligibility requirement, the Department will not consider the application for funding.

Finally, we remind LEAs that participate in submitting an i3 application of the continuing applicability of the provisions of the Individuals with Disabilities Education Act (IDEA) to students who may be served under these awards. Programs proposed in applications in which LEAs participate must be consistent with the rights, protections, and processes of IDEA for students who are receiving special education and related services or are being evaluated for such services. As described later in this notice, in connection with making competitive grant awards, an applicant is required, as a condition of receiving assistance under this program, to make civil rights assurances, including an assurance that its program or activity will comply with Section 504 of the Rehabilitation Act of 1973 and the Department's Section 504 implementing regulations, which prohibit discrimination on the basis of disability. Regardless of whether students with disabilities are specifically targeted as "high-need" students under a particular application for a grant program, recipients are required to comply with the nondiscrimination requirements of these laws. Among other things, the nondiscrimination requirements of these laws include an obligation that recipients ensure that students with disabilities are not discriminated against because benefits provided to all students under the recipient's program are inaccessible to students because of their disability. The Department also enforces Title II of the Americans with Disabilities Act and Title II implementing regulations, which prohibit discrimination on the basis of disability by public entities, with respect to certain public educational entities.

Priorities: This competition includes five absolute priorities and five competitive preference priorities that are explained in the following paragraphs.[1] These priorities are from the 2010 i3 NFP and from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486–78511) (Supplemental Priorities).

[1] The notice of final revisions to priorities, requirements, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**, establishes that the Secretary may use any of the priorities established in the 2010 i3 NFP when establishing the priorities for a particular Investing in Innovation competition.

Note on removing Absolute Priority 2— *Innovations that Improve the Use of Data:* For this year's competition, the Secretary chooses not to use the priority *Innovations That Improve the Use of Data* (Absolute Priority 2 in the 2010 i3 NFP). This action is not intended to discourage applicants from proposing projects that improve the use of data, so long as the proposal addresses one of the absolute priorities in this notice. Specifically, proposed projects that address *Absolute Priority 1—Innovations That Support Effective Teachers and Principals, Absolute Priority 3—Innovations That Complement the Implementation of High Standards and High-Quality Assessments,* and *Absolute Priority 4—Innovations That Turn Around Persistently Low-Performing Schools* may also include using data in innovative ways to support the broader aims of the absolute priorities. The Secretary recognizes the importance of data collection, analysis, and use, and believes that focusing on these strategies in the context of the remaining absolute priorities meets the goals of the Investing in Innovation program and the overall education reform goals of ARRA.

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 one of these priorities. Under this competition for Scale-up grants, each of the five absolute priorities constitutes its own funding category. The Secretary intends to award grants under each absolute priority for which applications of sufficient quality are submitted.

An applicant for a Scale-up grant must choose one of the five absolute priorities contained in this notice and address that priority in its application. An applicant must provide information on how its proposed project addresses the selection criteria in the project narrative section of its application.

These priorities are:

Absolute Priority 1—Innovations that Support Effective Teachers and Principals.

Under this priority, the Department provides funding to support practices, strategies, or programs that are designed to increase the number or percentages of teachers or principals who are highly effective teachers or principals or reduce the number or percentages of teachers or principals who are ineffective, especially for teachers of high-need students, by identifying, recruiting, developing, placing, rewarding, and retaining highly effective teachers or principals (or removing ineffective teachers or principals). In such initiatives, teacher or principal effectiveness should be determined through an evaluation system that is rigorous, transparent, and fair; performance should be differentiated using multiple rating categories of effectiveness; multiple measures of effectiveness should be taken into account, with data on student growth as a significant factor; and the measures should be designed and developed with teacher and principal involvement. (2010 i3 NFP)

Absolute Priority 2—Promoting Science, Technology, Engineering, and Mathematics (STEM) Education.

Under this priority, the Department provides funding to support projects that are designed to address one or more of the following areas:

(a) Providing students with increased access to rigorous and engaging coursework in STEM.

(b) Increasing the number and proportion of students prepared for postsecondary or graduate study and careers in STEM.

(c) Increasing the opportunities for high-quality preparation of, or professional development for, teachers or other educators of STEM subjects.

(d) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are provided with access to rigorous and engaging coursework in STEM or who are prepared for postsecondary or graduate study and careers in STEM.

(e) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are teachers or educators of STEM subjects and have increased opportunities for high-quality preparation or professional development. (Supplemental Priorities).

Absolute Priority 3—Innovations that Complement the Implementation of High Standards and High-Quality Assessments.

Under this priority, the Department provides funding for practices, strategies, or programs that are designed to support States' efforts to transition to standards and assessments that measure students' progress toward college- and career-readiness, including curricular and instructional practices, strategies, or programs in core academic subjects (as defined in section 9101(11) of the Elementary and Secondary Education Act of 1965, as amended (ESEA)) that are aligned with high academic content and achievement standards and with high-quality assessments based on those standards.[2] Proposed projects may include, but are not limited to, practices, strategies, or programs that are designed to: (a) Increase the success of under-represented student populations in academically rigorous courses and programs (such as Advanced Placement or International Baccalaureate courses; dual-enrollment programs; "early college high schools;" and science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities); (b) increase the development and use of formative assessments or interim assessments, or other performance-based tools and "metrics" that are aligned with high student content and academic achievement standards; or (c) translate the standards and information from assessments into classroom practices that meet the needs of all students, including high-need students.

Under this priority, an eligible applicant must propose a project that is based on standards that are at least as rigorous as its State's standards. If the proposed project is based on standards other than those adopted by the eligible applicant's State, the applicant must explain how the standards are aligned with and at least as rigorous as the eligible applicant's State's standards as well as how the standards differ. (2010 i3 NFP).

Absolute Priority 4—Innovations that Turn Around Persistently Low-Performing Schools.

Under this priority, the Department provides funding to support strategies, practices, or programs that are designed to turn around schools that are in any of the following categories: (a) Persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program); [3] (b) Title I schools that are in

[2] Consistent with the Race to the Top Fund, the Department interprets the core academic subject of "science" under section 9101(11) of the ESEA to include STEM education (science, technology, engineering, and mathematics) which encompasses a wide-range of disciplines, including computer science.

[3] Under the final requirements for the School Improvement Grants program, "persistently lowest-achieving schools" means, as determined by the State, (a) any Title I school in improvement, corrective action, or restructuring that (i) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (b) any secondary school that is eligible for, but does not receive, Title I funds that (i) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds,

Continued

corrective action or restructuring under section 1116 of the ESEA; or (c) secondary schools (both middle and high schools) eligible for but not receiving Title I funds that, if receiving Title I funds, would be in corrective action or restructuring under section 1116 of the ESEA. These schools are referred to as Investing in Innovation Fund Absolute Priority 4 schools.

Proposed projects must include strategies, practices, or programs that are designed to turn around Investing in Innovation Fund Absolute Priority 4 schools through either whole-school reform or targeted approaches to reform. Applicants addressing this priority must focus on either:

(a) Whole-school reform, including, but not limited to, comprehensive interventions to assist, augment, or replace Investing in Innovation Fund Absolute Priority 4 schools, including the school turnaround, restart, closure, and transformation models of intervention supported under the Department's School Improvement Grants program (see Final Requirements for School Improvement Grants as Amended in January 2010 (January 28, 2010) at *http://www2.ed.gov/programs/sif/faq.html*); or

(b) Targeted approaches to reform, including, but not limited to: (1) Providing more time for students to learn core academic content by expanding or augmenting the school day, school week, or school year, or by increasing instructional time for core academic subjects (as defined in section 9101(11) of the ESEA); (2) integrating "student supports" into the school model to address non-academic barriers to student achievement; or (3) creating multiple pathways for students to earn regular high school diplomas (*e.g.,* by operating schools that serve the needs of over-aged, under-credited, or other students with an exceptional need for support and flexibility pertaining to when they attend school; awarding credit based on demonstrated evidence of student competency; and offering dual-enrollment options). (2010 i3 NFP).

Absolute Priority 5—Improving Achievement and High School Graduation Rates (Rural Local Educational Agencies)

Under this priority, the Department provides funding to support projects that are designed to address accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for students in rural local educational agencies (as defined in this notice). (Supplemental Priorities)

Note: The Secretary encourages applicants that choose to respond to Absolute Priority 5 to also address how their applications meet one of the other Absolute Priorities. In addition, applicants that choose to respond to Absolute Priority 5 should identify in the application and the i3 Applicant Information Sheet all rural LEAs (as defined in this notice) where the project will be implemented, or identify in the application how the applicant will choose any rural LEAs where the project will be implemented, and explain how the proposed innovative practices, strategies, or programs address the unique challenges of high-need students in schools within a rural LEA, resulting in accelerated learning and improved high school graduation and college enrollment rates. Applicants may also provide information on the applicant's experience and skills, or the experience and skills of their partners, in serving high-need students in rural LEAs in responding to Selection Criterion D. *Quality of the Management Plan and Personnel.*

Competitive Preference Priorities: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Applicants may address more than one of the competitive preference priorities; however, the Department will review and award points only for a maximum of two of the competitive preference priorities. Therefore, an applicant must identify in the project narrative section of its application the priority or priorities it wishes the Department to consider for purposes of earning the competitive preference priority points.

Note: The Department will not review or award points under any competitive preference priority for an application that (1) fails to clearly identify the competitive preference priorities it wishes the Department to consider for purposes of earning the competitive preference priority points, or (2) identifies more than two competitive preference priorities.

These priorities are:

Competitive Preference Priority 6—Innovations for Improving Early Learning Outcomes (zero or one point).

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to improve educational outcomes for high-need students who are young children (birth through 3rd grade) by enhancing the quality of early learning programs. To meet this priority, applications must focus on (a) improving young children's school readiness (including social, emotional, and cognitive readiness) so that children are prepared for success in core academic subjects (as defined in section 9101(11) of the ESEA); (b) improving developmental milestones and standards and aligning them with appropriate outcome measures; and (c) improving alignment, collaboration, and transitions between early learning programs that serve children from birth to age three, in preschools, and in kindergarten through third grade. (2010 i3 NFP)

Competitive Preference Priority 7—Innovations that Support College Access and Success (zero or one point).

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to enable kindergarten through grade 12 (K–12) students, particularly high school students, to successfully prepare for, enter, and graduate from a two- or four-year college. To meet this priority, applications must include practices, strategies, or programs for K–12 students that (a) address students' preparedness and expectations related to college; (b) help students understand issues of college affordability and the financial aid and college application processes; and (c) provide support to students from peers and knowledgeable adults. (2010 i3 NFP)

Competitive Preference Priority 8—Innovations to Address the Unique Learning Needs of Students with Disabilities and Limited English Proficient Students (zero or one point).

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to address the unique learning needs of students with disabilities, including those who are assessed based on alternate academic achievement standards, or the linguistic and academic needs of limited English proficient students. To meet this priority, applications must provide for the implementation of particular practices, strategies, or programs that are designed to improve academic outcomes, close achievement gaps, and increase college- and career-readiness, including increasing high school graduation rates (as defined in this notice), for students with disabilities or limited English proficient students. (2010 i3 NFP)

Competitive Preference Priority 9—Improving Productivity (zero or one point).

We give competitive preference to applications for projects that are designed to significantly increase efficiency in the use of time, staff,

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whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years. *See http://www2.ed.gov/programs/sif/faq.html.*

money, or other resources while improving student learning or other educational outcomes (*i.e.,* outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies. (Supplemental Priorities)

Competitive Preference Priority 10—Technology (zero or one point).

We give competitive preference to applications for projects that are designed to improve student achievement [4] or teacher effectiveness through the use of high-quality digital tools or materials, which may include preparing teachers to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials. (Supplemental Priorities)

Definitions:

The Secretary establishes the following definitions for the Investing in Innovation Fund. We may apply these definitions in any year in which this program is in effect.

Note: This notice invites applications for Scale-up grants. The following definitions apply to the three types of grants under the i3 program (Scale-up, Validation, or Development). Therefore, some definitions included in this section may be more applicable to applications for Validation grants.

Definitions Related to Evidence

Carefully matched comparison group design means a type of quasi-experimental study that attempts to approximate an experimental study. More specifically, it is a design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome. These characteristics include, but are not limited to: (1) Prior test scores and other measures of academic achievement (preferably, the same measures that the study will use to evaluate outcomes for the two groups); (2) demographic characteristics, such as age, disability, gender, English proficiency, ethnicity, poverty level, parents' educational attainment, and single- or two-parent family background; (3) the time period in which the two groups are studied (*e.g.,* the two groups are children entering kindergarten in the same year as opposed to sequential years); and (4) methods used to collect outcome data (*e.g.,* the same test of reading skills administered in the same way to both groups).

Experimental study means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to participate in a project being evaluated (treatment group) or not to participate in the project (control group). The effect of the project is the average difference in outcomes between the treatment and control groups.

Independent evaluation means that the evaluation is designed and carried out independent of, but in coordination with, any employees of the entities who develop a practice, strategy, or program and are implementing it. This independence helps ensure the objectivity of an evaluation and prevents even the appearance of a conflict of interest.

Interrupted time series design [5] means a type of quasi-experimental study in which the outcome of interest is measured multiple times before and after the treatment for program participants only. If the program had an impact, the outcomes after treatment will have a different slope or level from those before treatment. That is, the series should show an "interruption" of the prior situation at the time when the program was implemented. Adding a comparison group time series, such as schools not participating in the program or schools participating in the program in a different geographic area, substantially increases the reliability of the findings.

Moderate evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity) but have limited generalizability (*i.e.,* moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence: (1) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) supporting the effectiveness of the practice, strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability; (2) at least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or (3) correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

Quasi-experimental study means an evaluation design that attempts to approximate an experimental design and can support causal conclusions (*i.e.,* minimizes threats to internal validity, such as selection bias, or allows them to be modeled). Well-designed quasi-experimental studies include carefully matched comparison group designs (as defined in this notice), interrupted time series designs (as defined in this notice), or regression discontinuity designs (as defined in this notice).

Regression discontinuity design study means, in part, a quasi-experimental study design that closely approximates an experimental study. In a regression discontinuity design, participants are assigned to a treatment or comparison group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Another example would be assignment of eligible students, teachers, classrooms, or schools above a certain score ("cut score") to the treatment group and assignment of those below the score to the comparison group.

Strong evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (*i.e.,* studies with high external validity). The following are

[4] For purposes of this priority, the Supplemental Priorities define student achievement as follows:

Student achievement means—

(a) For tested grades and subjects:

(1) A student's score on the State's assessments under section 1111(b)(3) of the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms; and

(b) For non-tested grades and subjects:

Alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms.

[5] A single subject or single case design is an adaptation of an interrupted time series design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population. In some single subject designs, treatment reversal or multiple baseline designs are used to increase internal validity. In a treatment reversal design, after a pretreatment or baseline outcome measurement is compared with a post treatment measure, the treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. A multiple baseline design addresses concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

examples of strong evidence: (1) More than one well-designed and well-implemented (as defined in this notice) experimental study (as defined in this notice) or well-designed and well-implemented (as defined in this notice) quasi-experimental study (as defined in this notice) that supports the effectiveness of the practice, strategy, or program; or (2) one large, well-designed and well-implemented (as defined in this notice) randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

Well-designed and well-implemented means, with respect to an experimental or quasi-experimental study (as defined in this notice), that the study meets the What Works Clearinghouse evidence standards, with or without reservations (see *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1* and in particular the description of "Reasons for Not Meeting Standards" at *http://ies.ed.gov/ncee/wwc/references/idocviewer/Doc.aspx?docId=9&tocId=4#reasons).*

Other Definitions

Applicant means the entity that applies for a grant under this program on behalf of an eligible applicant (*i.e.,* an LEA or a partnership in accordance with section 14007(a)(1)(B) of the ARRA).

Consortium of schools means two or more public elementary or secondary schools acting collaboratively for the purpose of applying for and implementing an Investing in Innovation Fund grant jointly with an eligible nonprofit organization.

Formative assessment means assessment questions, tools, and processes that are embedded in instruction and are used by teachers and students to provide timely feedback for purposes of adjusting instruction to improve learning.

Highly effective principal means a principal whose students, overall and for each subgroup as described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender), achieve high rates (*e.g.,* one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that principal effectiveness is evaluated, in significant part, based on student growth. Supplemental measures may include, for example, high school graduation rates; college enrollment rates; evidence of providing supportive teaching and learning conditions, support for ensuring effective instruction across subject areas for a well-rounded education, strong instructional leadership, and positive family and community engagement; or evidence of attracting, developing, and retaining high numbers of effective teachers.

Highly effective teacher means a teacher whose students achieve high rates (*e.g.,* one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that teacher effectiveness is evaluated, in significant part, based on student growth. Supplemental measures may include, for example, multiple observation-based assessments of teacher performance or evidence of leadership roles (which may include mentoring or leading professional learning communities) that increase the effectiveness of other teachers in the school or LEA.

High-need student means a student at risk of educational failure, or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who are over-age and under-credited, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a regular high school diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are limited English proficient.

High school graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

Interim assessment means an assessment that is given at regular and specified intervals throughout the school year, is designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and produces results that can be aggregated (*e.g.,* by course, grade level, school, or LEA) in order to inform teachers and administrators at the student, classroom, school, and LEA levels.

National level, as used in reference to a Scale-up grant, describes a project that is able to be effective in a wide variety of communities and student populations around the country, including rural and urban areas, as well as with the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender).

Nonprofit organization means an entity that meets the definition of "nonprofit" under 34 CFR 77.1(c), or an institution of higher education as defined by section 101(a) of the Higher Education Act of 1965, as amended.

Official partner means any of the entities required to be part of a partnership under section 14007(a)(1)(B) of the ARRA.

Other partner means any entity, other than the applicant and any official partner, that may be involved in a proposed project.

Regional level, as used in reference to a Scale-up or Validation grant, describes a project that is able to serve a variety of communities and student populations within a State or multiple States, including rural and urban areas, as well as with the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender). To be considered a regional-level project, a project must serve students in more than one LEA. The exception to this requirement would be a project implemented in a State in which the State educational agency is the sole educational agency for all schools and thus may be considered an LEA under section 9101(26) of the ESEA. Such a State would meet the definition of regional for the purposes of this notice.

Regular high school diploma means, consistent with 34 CFR 200.19(b)(1)(iv), the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General Education Development (GED) credential, certificate of attendance, or any alternative award.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under section 1111(b)(3) of the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms; and

(b) For non-tested grades and subjects: Alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms.

Student growth means the change in student achievement data for an individual student between two or more points in time. Growth may be measured by a variety of approaches, but any approach used must be statistically rigorous and based on student achievement data, and may also include other measures of student learning in order to increase the construct validity and generalizability of the information.

Definition From Supplemental Priorities

Note: These definitions are from the Supplemental Priorities and apply to Absolute Priority 5 and Competitive Preference Priority 9.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Rural local educational agency means a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *http://www2.ed.gov/nclb/freedom/local/reap.html.*

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Section 14007, Pub. L. 111–5.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 12, 2010 (75 FR 12004–12071). (c) The notice of final revisions to priorities, requirements, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**) (2011 Notice of Final i3 Revisions). (d) The notice of final supplemental priorities and definitions for Discretionary Grant Programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486–78511).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: $148,200,000.

These estimated available funds are for all three types of grants under the i3 program (Scale-up, Validation, and Development).

Contingent upon the availability of funds and the quality of the applications received, we may make additional awards in FY 2012 or later years from the list of unfunded applicants from this competition.

Estimated Range of Awards:
Scale-up grants: Up to $25,000,000.
Validation grants: Up to $15,000,000.
Development grants: Up to $3,000,000.

Estimated Average Size of Awards:
Scale-up grants: $24,000,000.
Validation grants: $12,000,000.
Development grants: $2,800,000.

Estimated Number of Awards:
Scale-up grants: Up to 2 awards.
Validation grants: Up to 5 awards.
Development grants: Up to 15 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36–60 months.

III. Eligibility Information

1. *Providing Innovations that Improve Achievement for High-Need Students:* All eligible applicants must implement practices, strategies, or programs for high-need students (as defined in this notice). (2010 i3 NFP)

2. *Eligible Applicants:* Entities eligible to apply for Investing in Innovation Fund grants include: (a) An LEA or (b) a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools. An eligible applicant that is a partnership applying under section 14007(a)(1)(B) of the ARRA must designate one of its official partners (as defined in this notice) to serve as the applicant in accordance with the Department's regulations governing group applications in 34 CFR 75.127 through 75.129. (2010 i3 NFP)

3. *Eligibility Requirements:* To be eligible for an award, an eligible applicant must—except as specifically set forth in the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* that follows:

(1)(A) Have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, students with disabilities); or

(B) Have demonstrated success in significantly increasing student academic achievement for all groups of students described in that section;

(2) Have made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data;

(3) Demonstrate that it has established one or more partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale; and

(4) In the case of an eligible applicant that includes a nonprofit organization, provide in the application the names of the LEAs with which the nonprofit organization will partner, or the names of the schools in the consortium with which it will partner. If an eligible applicant that includes a nonprofit organization intends to partner with additional LEAs or schools that are not named in the application, it must describe in the application the demographic and other characteristics of these LEAs and schools and the process it will use to select them as either official or other partners. An applicant must identify its specific partners before a grant award will be made. (2010 i3 NFP).

Note: Applicants should provide information addressing the eligibility requirements in Appendix C, under "Other Attachments Form," of their applications.

Note About LEA Eligibility: For purposes of this program, an LEA is an LEA located within one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico. (2010 i3 NFP)

Note About Eligibility for an Eligible Applicant That Includes a Nonprofit Organization: The authorizing statute (as amended) specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements in paragraphs (1) and (2) of the eligibility requirements for this program if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. For an eligible applicant that includes a nonprofit organization, the nonprofit organization must demonstrate that it has a record of significantly improving student achievement, attainment, or retention through its record of work with an LEA or schools. Therefore, an eligible applicant that includes a nonprofit organization does not

necessarily need to include as a partner for its Investing in Innovation Fund grant an LEA or a consortium of schools that meets the requirements in paragraphs (1) and (2).

In addition, the authorizing statute (as amended) specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements of paragraph (3) of the eligibility requirements in this notice if the eligible applicant demonstrates that it will meet the requirement relating to private-sector matching. (2010 i3 NFP)

1. *Cost Sharing or Matching:* To be eligible for an award, an eligible applicant must demonstrate that it has established one or more partnerships with an entity or organization in the private sector, which may include philanthropic organizations, and that the entity or organization in the private sector will provide matching funds in order to help bring project results to scale. An eligible applicant must obtain matching funds or in-kind donations equal to at least 5 percent of its grant award.[6] Selected eligible applicants must submit evidence of the full amount of private-sector matching funds following the peer review of applications. An award will not be made unless the applicant provides adequate evidence that the full amount of the private-sector match has been committed or the Secretary approves the eligible applicant's request to reduce the matching-level requirement.

The Secretary may consider decreasing the matching requirement in the most exceptional circumstances, on a case-by-case basis. An eligible applicant that anticipates being unable to meet the full amount of the private-sector matching requirement must include in its application a request to the Secretary to reduce the matching-level requirement, along with a statement of the basis for the request. (2010 i3 NFP, as revised by the 2011 Notice of Final i3 Revisions).

2. *Other:* The Secretary establishes the following requirements for the Investing in Innovation Fund. We may apply these requirements in any year in which this program is in effect.

• *Evidence Standards:* To be eligible for an award, an application for a Scale-up grant must be supported by strong evidence (as defined in this notice). (2010 i3 NFP)

Note: Applicants should provide information addressing the required evidence standards in Appendix D, under "Other Attachments Form," of their applications.

• *Funding Categories:* An applicant must state in its application whether it is applying for a Scale-up, Validation, or Development grant. An applicant may not submit an application for the same proposed project under more than one type of grant. An applicant will be considered for an award only for the type of grant for which it applies. (2010 i3 NFP)

• *Subgrants:* In the case of an eligible applicant that is a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools, the partner serving as the applicant may make subgrants to one or more official partners (as defined in this notice). (2010 i3 NFP)

• *Limits on Grant Awards:* (a) No grantee may receive more than two new grant awards of any type under the i3 program in a single year; (b) In any two-year period, no grantee may receive more than one new Scale-up or Validation grant; and (c) No grantee may receive more than $55 million in new grant awards under the i3 program in a single year. (2010 i3 NFP, as revised by the 2011 Notice of Final i3 Revisions).

• *Evaluation:* A grantee must comply with the requirements of any evaluation of the program conducted by the Department. In addition, the grantee is required to conduct an independent evaluation (as defined in this notice) of its project and must agree, along with its independent evaluator, to cooperate with any technical assistance provided by the Department or its contractor. The purpose of this technical assistance will be to ensure that the evaluations are of the highest quality and to encourage commonality in evaluation approaches across funded projects where such commonality is feasible and useful. Finally, the grantee must make broadly available through formal (*e.g.,* peer-reviewed journals) or informal (*e.g.,* newsletters) mechanisms, and in print or electronically, the results of any evaluations it conducts of its funded activities. For Scale-up and Validation grants, the grantee must also ensure the data from their evaluations are made available to third-party researchers consistent with applicable privacy requirements. (2010 i3 NFP).

• *Participation in* "*Communities of Practice*"*:* Grantees are required to participate in, organize, or facilitate, as appropriate, communities of practice for the Investing in Innovation Fund. A community of practice is a group of grantees that agrees to interact regularly to solve a persistent problem or improve practice in an area that is important to them. Establishment of communities of practice under the Investing in Innovation Fund will enable grantees to meet, discuss, and collaborate with each other regarding grantee projects. (2010 i3 NFP).

IV. Application and Submission Information

1. *Submission of Proprietary Information:*

Given the types of projects that may be proposed in applications for the Investing in Innovation Fund, some applications may include proprietary information as it relates to confidential commercial information. Confidential commercial information is defined as information the disclosure of which could reasonably be expected to cause substantial competitive harm. Upon submission, applicants should identify any information contained in their application that they consider to be confidential commercial information. Consistent with the process followed in the FY 2010 i3 competition, we plan on posting the project narrative sections of all Scale-up applications on the Department's Web site. Identifying proprietary information in your application will help facilitate this public disclosure process. Applicants are encouraged to identify only the specific information that the applicant considers to be proprietary and list the page numbers on which this information can be found in the appropriate Appendix section, under "Other Attachments Form," of their applications. In addition to identifying the page number on which that information can be found, eligible applicants will assist the Department in making determinations on public release of the application by being as specific as possible in identifying the information they consider proprietary. Please note that, in many instances, identification of entire pages of documentation would not be appropriate.

2. *Address To Request Application Package:*

You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www2.ed.gov/programs/innovation/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

[6] The 2011 Notice of Final i3 Revisions modified the "Cost Sharing and Matching" requirement established in the 2010 i3 NFP by providing that the Secretary will specify the amount of required private-sector matching funds or in-kind donations in the notice inviting applications for the specific i3 competition. For this competition, the Secretary establishes a matching requirement of at least 5 percent of the grant award.

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 from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.411A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

3. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent To Apply: June 23, 2011

We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application for funding by completing a web-based form. When completing this form, applicants will provide: (1) The applicant organization's name and address, (2) the type of grant for which the applicant intends to apply, (3) the one absolute priority the applicant intends to address, and (4) a maximum of two of the competitive preference priorities the applicant wishes the Department to consider for purposes of earning the competitive preference priority points. Applicants may access this form online at *http://go.usa.gov/bsG.*

Applicants that do not complete this form may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the application narrative [Part III] for a Scale-up application to no more than 50 pages. Applicants are also strongly encouraged not to include lengthy appendices that contain information that could not be included in the narrative. Applicants should use the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, 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 suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

4. *Submission Dates and Times:*

Applications Available: June 6, 2011.

Deadline for Notice of Intent To Apply: June 23, 2011.

Pre-Application Meeting: The i3 program intends to hold pre-application meetings designed to provide technical assistance to interested applicants for all three types of grants. Detailed information regarding the pre-application meeting locations, dates, and times will be provided in a separate notice in the **Federal Register**. Once the notice is published, it will be available, along with registration information, on the Investing in Innovation (i3) Web site at *http://www2.ed.gov/programs/innovation/index.html.*

Deadline for Transmittal of Applications: August 2, 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. 8. *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: October 3, 2011.

5. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

7. *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*).

8. *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 Investing in Innovation Fund, CFDA number 84.411A (Scale-up grants), 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 Investing in Innovation Fund 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 84.411, not 84.411A).

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 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 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 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 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

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: Thelma Leenhouts, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W302, Washington, DC 20202–5900. FAX: (202) 401–8466.

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 84.411A)
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 84.411A)
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 competition are from the 2010 i3 NFP and from 34 CFR 75.210.[7] The points assigned to each criterion are indicated in the parenthesis next to the criterion. Applicants may earn up to a total of 100 points.

The selection criteria for the Scale-up grant competition are as follows:

A. *Need for the Project (up to 30 points).*

The Secretary considers the need for the project.

In determining the need for the project, the Secretary considers the following factors:

(1) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(2) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

(3) The importance and magnitude of the effect expected to be obtained by the proposed project, including the extent to which the project will substantially and measurably improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and completion rates. The evidence in support of the importance and magnitude of the effect would be the research-based evidence provided by the eligible applicant to support the proposed project. (2010 i3 NFP)

Note Linking Magnitude of Effect to Presented Evidence: The Secretary notes that the extent to which the proposed project is consistent with the research evidence provided by the eligible applicant to support the proposed project is relevant to addressing the third factor of Selection Criterion A and, therefore, will be considered by the Secretary in evaluating the importance and/or magnitude of the impact expected to be obtained by the proposed project.

B. *Quality of the Project Design (up to 30 points).*

The Secretary considers the quality of the project design of the proposed project.

In determining the quality of the project design, the Secretary considers the following factors:

(1) The extent to which the proposed project has a clear set of goals and an explicit strategy, with actions that are (a) aligned with the priorities the eligible applicant is seeking to meet, and (b) expected to result in achieving the goals, objectives, and outcomes of the proposed project. (2010 i3 NFP)

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(3) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(4) The eligible applicant's estimate of the cost of the proposed project, which includes the start up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project. The eligible applicant must include an estimate of the costs for the eligible applicant or others (including other partners) to reach 100,000, 500,000, and 1,000,000 students. (2010 i3 NFP)

Note: The Secretary considers cost estimates both (a) to assess the reasonableness of the costs relative to the

[7] The 2011 Notice of Final i3 Revisions establishes that the Secretary may use one or more of the selection criteria established in the 2010 i3 NFP, any of the selection criteria in 34 CFR 75.210, criteria based on the statutory requirements for the i3 program in accordance with 34 CFR 75.209, or any combination of these when establishing selection criteria for each particular type of grant (Scale-up, Validation, and Development) in an i3 competition.

objectives, design, and potential significance for the total number of students to be served by the proposed project, which is determined by the eligible applicant, and (b) to understand the possible costs for the eligible applicant or others (including other partners) to reach the scaling targets of 100,000, 500,000, and 1,000,000 students for Scale-up grants. An eligible applicant is free to propose how many students it will serve under its project, and is expected to reach that number of students by the end of the grant period. The scaling targets, in contrast, are theoretical and allow peer reviewers to assess the cost-effectiveness generally of proposed projects, particularly in cases where initial investment may be required to support projects that operate at reduced cost in the future, whether implemented by the eligible applicant or any other entity. Grantees are not required to reach these numbers during the grant period.

(5) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the eligible applicant and any other partners at the end of the Scale-up grant. (2010 i3 NFP)

C. *Quality of Project Evaluation (up to 20 points).*

The Secretary considers the quality of the project evaluation.

In determining the quality of the project evaluation to be conducted, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will include a well-designed experimental study or, if a well-designed experimental study of the project is not possible, the extent to which the methods of evaluation will include a well-designed quasi-experimental study. (2010 i3 NFP)

(2) The extent to which the methods of evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes. (2010 i3 NFP)

(3) The extent to which the evaluation will provide sufficient information about the key elements and approach of the project so as to facilitate replication or testing in other settings. (2010 i3 NFP).

(4) The extent to which the proposed project plan includes sufficient resources to carry out the project evaluation effectively. (2010 i3 NFP).

Note: We encourage eligible applicants to review the following technical assistance resources on evaluation: (1) What Works Clearinghouse Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1;* and (2) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.*

D. *Quality of the Management Plan and Personnel (up to 20 points).*

The Secretary considers the quality of the management plan and personnel for the proposed project.

In determining the quality of the management plan and personnel for the proposed project, the Secretary considers the following factors:

(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, as well as tasks related to the sustainability and scalability of the proposed project. (2010 i3 NFP)

(2) The qualifications, including relevant training and experience, of the project director and key project personnel, especially in managing large, complex, and rapidly growing projects. (2010 i3 NFP)

(3) The eligible applicant's capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale on a national, regional, or State level working directly, or through partners, either during or following the end of the grant period. (2010 i3 NFP)

2. *Review and Selection Process:* The Department will screen applications submitted in accordance with the requirements in this notice, and will determine which applications have met eligibility and other statutory requirements.

The Department will use independent reviewers from various backgrounds and professions including: Pre-kindergarten–12 teachers and principals, college and university educators, researchers and evaluators, social entrepreneurs, strategy consultants, grant makers and managers, and others with education expertise. The Department will thoroughly screen all reviewers for conflicts of interest to ensure a fair and competitive review process.

Reviewers will read, prepare a written evaluation, and score the applications assigned to their panel, using the selection criteria provided in this notice. For Scale-up grant applications, the Department intends to conduct a single tier review and peer reviewers will review and score all four selection criteria. If eligible applicants have chosen to address a maximum of two of the competitive preference priorities for purposes of earning the competitive preference priority points, reviewers will review and score those competitive preference priorities. If points are awarded, those points will be added to the eligible applicant's score.

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:* The overall purpose of the Investing in Innovation program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth for high-need students. We have established several performance measures for the Investing in Innovation Scale-up grants.

Short-term performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of programs, practices, or strategies supported by a Scale-up grant with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes at scale; (3) the percentage of programs, practices, or strategies supported by a Scale-up grant with ongoing evaluations that are providing high-quality implementation data and performance feedback that allow for periodic assessment of progress toward achieving intended outcomes; and (4) the cost per student actually served by the grant.

Long-term performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of programs, practices, or strategies supported by a Scale-up grant that implement a completed well-designed, well-implemented and independent evaluation that provides evidence of their effectiveness at improving student outcomes at scale; (3) the percentage of programs, practices, or strategies supported by a Scale-up grant with a completed well-designed, well-implemented and independent evaluation that provides information about the key elements and the approach of the project so as to facilitate replication or testing in other settings; and (4) the cost per student for programs, practices, or strategies that were proven to be effective at improving educational outcomes for students.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W302, Washington, DC 20202–5900. Fax: (202) 401–8466. Telephone: (202) 453–7122 or by e-mail: *i3@ed.gov.*

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: 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.* At this site 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). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 26, 2011.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2011–13592 Filed 6–2–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Investing in Innovation Fund

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information

Investing in Innovation Fund

Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.411B (Validation grants).

Dates:

Applications Available: June 6, 2011.

Deadline for Notice of Intent To Apply: June 23, 2011.

Deadline for Transmittal of Applications: August 2, 2011.

Deadline for Intergovernmental Review: October 3, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Investing in Innovation Fund, established under section 14007 of the American Recovery and Reinvestment Act of 2009 (ARRA), provides funding to support (1) Local educational agencies (LEAs), and (2) nonprofit organizations in partnership with (a) one or more LEAs or (b) a consortium of schools. The purpose of this program is to provide competitive grants to applicants with a record of improving student achievement and attainment in order to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth (as defined in this notice), closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

These grants will (1) Allow eligible entities to expand and develop innovative practices that can serve as models of best practices, (2) allow eligible entities to work in partnership with the private sector and the philanthropic community, and (3) support eligible entities in identifying and documenting best practices that can be shared and taken to scale based on demonstrated success.

Under this program, the Department awards three types of grants: "Scale-up" grants, "Validation" grants, and "Development" grants. Applicants must specify the type of grant they are seeking at the time of application. Among the three grant types, there are differences in terms of the evidence that an applicant is required to submit in support of its proposed project; the expectations for "scaling up" successful projects during or after the grant period, either directly or through partners; and the funding that a successful applicant is eligible to receive. This notice invites applications for Validation grants. Notices inviting applications for Scale-up and Development grants are published elsewhere in this issue of the **Federal Register**.

Validation grants provide funding to support practices, strategies, or

programs that show promise, but for which there is currently only *moderate evidence* (as defined in this notice) that the proposed practice, strategy, or program will have a statistically significant effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates and that, with further study, the effect of implementing the proposed practice, strategy, or program may prove to be substantial and important. Thus, applications for Validation grants do not need to have the same level of research evidence to support the proposed project as is required for Scale-up grants. An applicant may also demonstrate success through an intermediate variable strongly correlated with these outcomes, such as teacher or principal effectiveness.

An applicant for a Validation grant must estimate the number of students to be reached by the proposed project and provide evidence of its capacity to reach the proposed number of students during the course of the grant. In addition, an applicant for a Validation grant must provide evidence of its capacity (*e.g.,* qualified personnel, financial resources, management capacity) to scale up to a State or regional level, working directly or through partners either during or following the grant period. We recognize that LEAs are not typically responsible for taking to scale their practices, strategies, or programs in other LEAs and States. However, all applicants, including LEAs, can and should partner with others to disseminate and take to scale their effective practice, strategy, and program.

The Department will screen applications that are submitted for Validation grants in accordance with the requirements in this notice, and determine which applications have met the eligibility and other requirements in the notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 12, 2010 (75 FR 12004–12071) (2010 i3 NFP). Peer reviewers will review all eligible Validation grant applications. However, if the Department determines that an application for a Validation grant does not meet the definition of *moderate evidence* in this notice, or any other eligibility requirement, the Department will not consider the application for funding.

Finally, we remind LEAs that participate in submitting an i3 application of the continuing applicability of the provisions of the Individuals with Disabilities Education Act (IDEA) to students who may be served under these awards. Programs proposed in applications in which LEAs participate must be consistent with the rights, protections, and processes of IDEA for students who are receiving special education and related services or are being evaluated for such services. As described later in this notice, in connection with making competitive grant awards, an applicant is required, as a condition of receiving assistance under this program, to make civil rights assurances, including an assurance that its program or activity will comply with Section 504 of the Rehabilitation Act of 1973 and the Department's Section 504 implementing regulations, which prohibit discrimination on the basis of disability. Regardless of whether students with disabilities are specifically targeted as "high-need" students under a particular application for a grant program, recipients are required to comply with the nondiscrimination requirements of these laws. Among other things, the nondiscrimination requirements of these laws include an obligation that recipients ensure that students with disabilities are not discriminated against because benefits provided to all students under the recipient's program are inaccessible to students because of their disability. The Department also enforces Title II of the Americans with Disabilities Act and Title II implementing regulations, which prohibit discrimination on the basis of disability by public entities, with respect to certain public educational entities.

Priorities: This competition includes five absolute priorities and five competitive preference priorities that are explained in the following paragraphs.[1] These priorities are from the 2010 i3 NFP and from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486–78511) (Supplemental Priorities).

Note on removing Absolute Priority 2—Innovations That Improve the Use of Data: For this year's competition, the Secretary chooses not to use the priority *Innovations That Improve the Use of Data* (Absolute Priority 2 in the 2010 i3 NFP). This action is not intended to discourage applicants from proposing projects that improve the use of data, so long as the proposal addresses one of the absolute priorities in this notice. Specifically, proposed projects that address *Absolute Priority 1—Innovations That Support Effective Teachers and Principals, Absolute Priority 3—Innovations That Complement the Implementation of High Standards and High-Quality Assessments,* and *Absolute Priority 4—Innovations That Turn Around Persistently Low-Performing Schools* may also include using data in innovative ways to support the broader aims of the absolute priorities. The Secretary recognizes the importance of data collection, analysis, and use, and believes that focusing on these strategies in the context of the remaining absolute priorities meets the goals of the Investing in Innovation program and the overall education reform goals of ARRA.

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 one of these priorities. Under this competition for Validation grants, each of the five absolute priorities constitutes its own funding category. The Secretary intends to award grants under each absolute priority for which applications of sufficient quality are submitted.

An applicant for a Validation grant must choose one of the five absolute priorities contained in this notice and address that priority in its application. An applicant must provide information on how its proposed project addresses the selection criteria in the project narrative section of its application.

These priorities are:

Absolute Priority 1—Innovations That Support Effective Teachers and Principals

Under this priority, the Department provides funding to support practices, strategies, or programs that are designed to increase the number or percentages of teachers or principals who are highly effective teachers or principals or reduce the number or percentages of teachers or principals who are ineffective, especially for teachers of high-need students, by identifying, recruiting, developing, placing, rewarding, and retaining highly effective teachers or principals (or removing ineffective teachers or principals). In such initiatives, teacher or principal effectiveness should be determined through an evaluation system that is rigorous, transparent, and fair; performance should be

[1] The notice of final revisions to priorities, requirements, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**, establishes that the Secretary may use any of the priorities established in the 2010 i3 NFP when establishing the priorities for a particular Investing in Innovation competition.

differentiated using multiple rating categories of effectiveness; multiple measures of effectiveness should be taken into account, with data on student growth as a significant factor; and the measures should be designed and developed with teacher and principal involvement. (2010 i3 NFP)

Absolute Priority 2—Promoting Science, Technology, Engineering, and Mathematics (STEM) Education.

Under this priority, the Department provides funding to support projects that are designed to address one or more of the following areas:

(a) Providing students with increased access to rigorous and engaging coursework in STEM.

(b) Increasing the number and proportion of students prepared for postsecondary or graduate study and careers in STEM.

(c) Increasing the opportunities for high-quality preparation of, or professional development for, teachers or other educators of STEM subjects.

(d) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are provided with access to rigorous and engaging coursework in STEM or who are prepared for postsecondary or graduate study and careers in STEM.

(e) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are teachers or educators of STEM subjects and have increased opportunities for high-quality preparation or professional development. (Supplemental Priorities)

Absolute Priority 3—Innovations That Complement the Implementation of High Standards and High-Quality Assessments

Under this priority, the Department provides funding for practices, strategies, or programs that are designed to support States' efforts to transition to standards and assessments that measure students' progress toward college- and career-readiness, including curricular and instructional practices, strategies, or programs in core academic subjects (as defined in section 9101(11) of the Elementary and Secondary Education Act of 1965, as amended (ESEA)) that are aligned with high academic content and achievement standards and with high-quality assessments based on those standards.[2] Proposed projects may include, but are not limited to, practices, strategies, or programs that are designed to: (a) Increase the success of under-represented student populations in academically rigorous courses and programs (such as Advanced Placement or International Baccalaureate courses; dual-enrollment programs; "early college high schools;" and science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities); (b) increase the development and use of formative assessments or interim assessments, or other performance-based tools and "metrics" that are aligned with high student content and academic achievement standards; or (c) translate the standards and information from assessments into classroom practices that meet the needs of all students, including high-need students.

Under this priority, an eligible applicant must propose a project that is based on standards that are at least as rigorous as its State's standards. If the proposed project is based on standards other than those adopted by the eligible applicant's State, the applicant must explain how the standards are aligned with and at least as rigorous as the eligible applicant's State's standards as well as how the standards differ. (2010 i3 NFP)

Absolute Priority 4—Innovations That Turn Around Persistently Low-Performing Schools

Under this priority, the Department provides funding to support strategies, practices, or programs that are designed to turn around schools that are in any of the following categories: (a) Persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program);[3] (b) Title I schools that are in corrective action or restructuring under section 1116 of the ESEA; or (c) secondary schools (both middle and high schools) eligible for but not receiving Title I funds that, if receiving Title I funds, would be in corrective action or restructuring under section 1116 of the ESEA. These schools are referred to as Investing in Innovation Fund Absolute Priority 4 schools.

Proposed projects must include strategies, practices, or programs that are designed to turn around Investing in Innovation Fund Absolute Priority 4 schools through either whole-school reform or targeted approaches to reform. Applicants addressing this priority must focus on either:

(a) Whole-school reform, including, but not limited to, comprehensive interventions to assist, augment, or replace Investing in Innovation Fund Absolute Priority 4 schools, including the school turnaround, restart, closure, and transformation models of intervention supported under the Department's School Improvement Grants program (see Final Requirements for School Improvement Grants as Amended in January 2010 (January 28, 2010) at *http://www2.ed.gov/programs/sif/faq.html*); or

(b) Targeted approaches to reform, including, but not limited to: (1) Providing more time for students to learn core academic content by expanding or augmenting the school day, school week, or school year, or by increasing instructional time for core academic subjects (as defined in section 9101(11) of the ESEA); (2) integrating "student supports" into the school model to address non-academic barriers to student achievement; or (3) creating multiple pathways for students to earn regular high school diplomas (*e.g.,* by operating schools that serve the needs of over-aged, under-credited, or other students with an exceptional need for support and flexibility pertaining to when they attend school; awarding credit based on demonstrated evidence of student competency; and offering dual-enrollment options). (2010 i3 NFP)

Absolute Priority 5—Improving Achievement and High School Graduation Rates (Rural Local Educational Agencies)

Under this priority, the Department provides funding to support projects that are designed to address accelerating learning and helping to improve high

[2] Consistent with the Race to the Top Fund, the Department interprets the core academic subject of "science" under section 9101(11) of the ESEA to include STEM education (science, technology, engineering, and mathematics) which encompasses a wide-range of disciplines, including computer science.

[3] Under the final requirements for the School Improvement Grants program, "persistently lowest-achieving schools" means, as determined by the State, (a) Any Title I school in improvement, corrective action, or restructuring that (i) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (b) any secondary school that is eligible for, but does not receive, Title I funds that (i) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years. *See http://www2.ed.gov/programs/sif/faq.html.*

school graduation rates (as defined in this notice) and college enrollment rates for students in rural local educational agencies (as defined in this notice). (Supplemental Priorities).

Note: The Secretary encourages applicants that choose to respond to Absolute Priority 5 to also address how their applications meet one of the other Absolute Priorities. In addition, applicants that choose to respond to Absolute Priority 5 should identify in the application and the i3 Applicant Information Sheet all rural LEAs (as defined in this notice) where the project will be implemented, or identify in the application how the applicant will choose any rural LEAs where the project will be implemented, and explain how the proposed innovative practices, strategies, or programs address the unique challenges of high-need students in schools within a rural LEA, resulting in accelerated learning and improved high school graduation and college enrollment rates. Applicants may also provide information on the applicant's experience and skills, or the experience and skills of their partners, in serving high-need students in rural LEAs in responding to Selection Criterion D. *Quality of the Management Plan and Personnel.*

Competitive Preference Priorities: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Applicants may address more than one of the competitive preference priorities; however, the Department will review and award points only for a maximum of two of the competitive preference priorities. Therefore, an applicant must identify in the project narrative section of its application the priority or priorities it wishes the Department to consider for purposes of earning the competitive preference priority points.

Note: The Department will not review or award points under any competitive preference priority for an application that (1) Fails to clearly identify the competitive preference priorities it wishes the Department to consider for the purposes of earning the competitive preference priority points, or (2) identifies more than two competitive preference priorities.

These priorities are:

Competitive Preference Priority 6—Innovations for Improving Early Learning Outcomes (Zero or One Point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to improve educational outcomes for high-need students who are young children (birth through 3rd grade) by enhancing the quality of early learning programs. To meet this priority, applications must focus on (a) Improving young children's school readiness (including social, emotional, and cognitive readiness) so that children are prepared for success in core academic subjects (as defined in section 9101(11) of the ESEA); (b) improving developmental milestones and standards and aligning them with appropriate outcome measures; and (c) improving alignment, collaboration, and transitions between early learning programs that serve children from birth to age three, in preschools, and in kindergarten through third grade. (2010 i3 NFP)

Competitive Preference Priority 7—Innovations That Support College Access and Success (Zero or One Point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to enable kindergarten through grade 12 (K–12) students, particularly high school students, to successfully prepare for, enter, and graduate from a two- or four-year college. To meet this priority, applications must include practices, strategies, or programs for K–12 students that (a) Address students' preparedness and expectations related to college; (b) help students understand issues of college affordability and the financial aid and college application processes; and (c) provide support to students from peers and knowledgeable adults. (2010 i3 NFP)

Competitive Preference Priority 8—Innovations To Address the Unique Learning Needs of Students With Disabilities and Limited English Proficient Students (Zero or One Point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to address the unique learning needs of students with disabilities, including those who are assessed based on alternate academic achievement standards, or the linguistic and academic needs of limited English proficient students. To meet this priority, applications must provide for the implementation of particular practices, strategies, or programs that are designed to improve academic outcomes, close achievement gaps, and increase college- and career-readiness, including increasing high school graduation rates (as defined in this notice), for students with disabilities or limited English proficient students. (2010 i3 NFP)

Competitive Preference Priority 9—Improving Productivity (Zero or One Point)

We give competitive preference to applications for projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (*i.e.,* outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies. (Supplemental Priorities)

Competitive Preference Priority 10—Technology (Zero or One Point)

We give competitive preference to applications for projects that are designed to improve student achievement [4] or teacher effectiveness through the use of high-quality digital tools or materials, which may include preparing teachers to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials. (Supplemental Priorities)

Definitions

The Secretary establishes the following definitions for the Investing in Innovation Fund. We may apply these definitions in any year in which this program is in effect.

Note: This notice invites applications for Validation grants. The following definitions apply to the three types of grants under the i3 program (Scale-up, Validation, or Development). Therefore, some definitions included in this section may be more applicable to applications for Scale-up grants.

Definitions Related to Evidence

Carefully matched comparison group design means a type of quasi-experimental study that attempts to approximate an experimental study. More specifically, it is a design in which

[4] For purposes of this priority, the Supplemental Priorities define student achievement as follows:

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under section 1111(b)(3) of the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms; and

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms.

project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome. These characteristics include, but are not limited to: (1) Prior test scores and other measures of academic achievement (preferably, the same measures that the study will use to evaluate outcomes for the two groups); (2) demographic characteristics, such as age, disability, gender, English proficiency, ethnicity, poverty level, parents' educational attainment, and single- or two-parent family background; (3) the time period in which the two groups are studied (*e.g.,* the two groups are children entering kindergarten in the same year as opposed to sequential years); and (4) methods used to collect outcome data (*e.g.,* the same test of reading skills administered in the same way to both groups).

Experimental study means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to participate in a project being evaluated (treatment group) or not to participate in the project (control group). The effect of the project is the average difference in outcomes between the treatment and control groups.

Independent evaluation means that the evaluation is designed and carried out independent of, but in coordination with, any employees of the entities who develop a practice, strategy, or program and are implementing it. This independence helps ensure the objectivity of an evaluation and prevents even the appearance of a conflict of interest.

Interrupted time series design [5] means a type of quasi-experimental study in which the outcome of interest is measured multiple times before and after the treatment for program participants only. If the program had an impact, the outcomes after treatment will have a different slope or level from those before treatment. That is, the series should show an "interruption" of the prior situation at the time when the program was implemented. Adding a comparison group time series, such as schools not participating in the program or schools participating in the program in a different geographic area, substantially increases the reliability of the findings.

Moderate evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity) but have limited generalizability (*i.e.,* moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence: (1) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) supporting the effectiveness of the practice, strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability; (2) at least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or (3) correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

Quasi-experimental study means an evaluation design that attempts to approximate an experimental design and can support causal conclusions (*i.e.,* minimizes threats to internal validity, such as selection bias, or allows them to be modeled). Well-designed quasi-experimental studies include carefully matched comparison group designs (as defined in this notice), interrupted time series designs (as defined in this notice), or regression discontinuity designs (as defined in this notice).

Regression discontinuity design study means, in part, a quasi-experimental study design that closely approximates an experimental study. In a regression discontinuity design, participants are assigned to a treatment or comparison group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Another example would be assignment of eligible students, teachers, classrooms, or schools above a certain score ("cut score") to the treatment group and assignment of those below the score to the comparison group.

Strong evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (*i.e.,* studies with high external validity). The following are examples of strong evidence: (1) More than one well-designed and well-implemented (as defined in this notice) experimental study (as defined in this notice) or well-designed and well-implemented (as defined in this notice) quasi-experimental study (as defined in this notice) that supports the effectiveness of the practice, strategy, or program; or (2) one large, well-designed and well-implemented (as defined in this notice) randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

Well-designed and well-implemented means, with respect to an experimental or quasi-experimental study (as defined in this notice), that the study meets the What Works Clearinghouse evidence standards, with or without reservations (see *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1* and in particular the description of "Reasons for Not Meeting Standards" at *http://ies.ed.gov/ncee/wwc/references/idocviewer/Doc.aspx?docId=19&tocId=4#reasons).*

Other Definitions

Applicant means the entity that applies for a grant under this program on behalf of an eligible applicant (*i.e.,* an LEA or a partnership in accordance with section 14007(a)(1)(B) of the ARRA).

Consortium of schools means two or more public elementary or secondary schools acting collaboratively for the purpose of applying for and implementing an Investing in Innovation Fund grant jointly with an eligible nonprofit organization.

Formative assessment means assessment questions, tools, and processes that are embedded in instruction and are used by teachers and students to provide timely feedback for purposes of adjusting instruction to improve learning.

Highly effective principal means a principal whose students, overall and for each subgroup as described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and

[5] A single subject or single case design is an adaptation of an interrupted time series design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population. In some single subject designs, treatment reversal or multiple baseline designs are used to increase internal validity. In a treatment reversal design, after a pretreatment or baseline outcome measurement is compared with a post treatment measure, the treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. A multiple baseline design addresses concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

students of each gender), achieve high rates (*e.g.,* one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that principal effectiveness is evaluated, in significant part, based on student growth. Supplemental measures may include, for example, high school graduation rates; college enrollment rates; evidence of providing supportive teaching and learning conditions, support for ensuring effective instruction across subject areas for a well-rounded education, strong instructional leadership, and positive family and community engagement; or evidence of attracting, developing, and retaining high numbers of effective teachers.

Highly effective teacher means a teacher whose students achieve high rates (*e.g.,* one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that teacher effectiveness is evaluated, in significant part, based on student growth. Supplemental measures may include, for example, multiple observation-based assessments of teacher performance or evidence of leadership roles (which may include mentoring or leading professional learning communities) that increase the effectiveness of other teachers in the school or LEA.

High-need student means a student at risk of educational failure, or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who are over-age and under-credited, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a regular high school diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are limited English proficient.

High school graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

Interim assessment means an assessment that is given at regular and specified intervals throughout the school year, is designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and produces results that can be aggregated (*e.g.,* by course, grade level, school, or LEA) in order to inform teachers and administrators at the student, classroom, school, and LEA levels.

National level, as used in reference to a Scale-up grant, describes a project that is able to be effective in a wide variety of communities and student populations around the country, including rural and urban areas, as well as with the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender).

Nonprofit organization means an entity that meets the definition of "nonprofit" under 34 CFR 77.1(c), or an institution of higher education as defined by section 101(a) of the Higher Education Act of 1965, as amended.

Official partner means any of the entities required to be part of a partnership under section 14007(a)(1)(B) of the ARRA.

Other partner means any entity, other than the applicant and any official partner, that may be involved in a proposed project.

Regional level, as used in reference to a Scale-up or Validation grant, describes a project that is able to serve a variety of communities and student populations within a State or multiple States, including rural and urban areas, as well as with the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender). To be considered a regional-level project, a project must serve students in more than one LEA. The exception to this requirement would be a project implemented in a State in which the State educational agency is the sole educational agency for all schools and thus may be considered an LEA under section 9101(26) of the ESEA. Such a State would meet the definition of regional for the purposes of this notice.

Regular high school diploma means, consistent with 34 CFR 200.19(b)(1)(iv), the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General Education Development (GED) credential, certificate of attendance, or any alternative award.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under section 1111(b)(3) of the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms; and

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms.

Student growth means the change in student achievement data for an individual student between two or more points in time. Growth may be measured by a variety of approaches, but any approach used must be statistically rigorous and based on student achievement data, and may also include other measures of student learning in order to increase the construct validity and generalizability of the information.

Definition From Supplemental Priorities

Note: These definitions are from the Supplemental Priorities and apply to Absolute Priority 5 and Competitive Preference Priority 9.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Rural local educational agency means a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *http://www2.ed.gov/nclb/freedom/local/reap.html.*

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Section 14007, Public Law 111–5.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

(b) The notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 12, 2010

(75 FR 12004–12071). (c) The notice of final revisions to priorities, requirements, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**) (2011 Notice of Final i3 Revisions). (d) The notice of final supplemental priorities and definitions for Discretionary Grant Programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486–78511).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreements or discretionary grants.

Estimated Available Funds: $148,200,000.

These estimated available funds are for all three types of grants under the i3 program (Scale-up, Validation, and Development).

Contingent upon the availability of funds and the quality of the applications received, we may make additional awards in FY 2012 or later years from the list of unfunded applicants from this competition.

Estimated Range of Awards

Scale-up grants: Up to $25,000,000.
Validation grants: Up to $15,000,000.
Development grants: Up to $3,000,000.

Estimated Average Size of Awards

Scale-up grants: $24,000,000.
Validation grants: $12,000,000.
Development grants: $2,800,000.

Estimated Number of Awards:

Scale-up grants: Up to 2 awards.
Validation grants: Up to 5 awards.
Development grants: Up to 15 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36–60 months.

III. Eligibility Information

1. *Providing Innovations That Improve Achievement for High-Need Students:* All eligible applicants must implement practices, strategies, or programs for high-need students (as defined in this notice). (2010 i3 NFP)

2. *Eligible Applicants:* Entities eligible to apply for Investing in Innovation Fund grants include: (a) An LEA or (b) a partnership between a nonprofit organization and (1) One or more LEAs or (2) a consortium of schools. An eligible applicant that is a partnership applying under section 14007(a)(1)(B) of the ARRA must designate one of its official partners (as defined in this notice) to serve as the applicant in accordance with the Department's regulations governing group applications in 34 CFR 75.127 through 75.129. (2010 i3 NFP)

3. *Eligibility Requirements:* To be eligible for an award, an eligible applicant must—except as specifically set forth in the *Note About Eligibility for an Eligible Applicant That Includes a Nonprofit Organization* that follows:

(1)(A) Have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, students with disabilities); or

(B) Have demonstrated success in significantly increasing student academic achievement for all groups of students described in that section;

(2) Have made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data;

(3) Demonstrate that it has established one or more partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale; and

(4) In the case of an eligible applicant that includes a nonprofit organization, provide in the application the names of the LEAs with which the nonprofit organization will partner, or the names of the schools in the consortium with which it will partner. If an eligible applicant that includes a nonprofit organization intends to partner with additional LEAs or schools that are not named in the application, it must describe in the application the demographic and other characteristics of these LEAs and schools and the process it will use to select them as either official or other partners. An applicant must identify its specific partners before a grant award will be made. (2010 i3 NFP)

Note: Applicants should provide information addressing the eligibility requirements in Appendix C, under "Other Attachments Form," of their applications.

Note about LEA Eligibility: For purposes of this program, an LEA is an LEA located within one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico. (2010 i3 NFP)

Note About Eligibility for an Eligible Applicant That Includes a Nonprofit Organization: The authorizing statute (as amended) specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements in paragraphs (1) and (2) of the eligibility requirements for this program if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. For an eligible applicant that includes a nonprofit organization, the nonprofit organization must demonstrate that it has a record of significantly improving student achievement, attainment, or retention through its record of work with an LEA or schools. Therefore, an eligible applicant that includes a nonprofit organization does not necessarily need to include as a partner for its Investing in Innovation Fund grant an LEA or a consortium of schools that meets the requirements in paragraphs (1) and (2).

In addition, the authorizing statute (as amended) specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements of paragraph (3) of the eligibility requirements in this notice if the eligible applicant demonstrates that it will meet the requirement relating to private-sector matching. (2010 i3 NFP)

1. *Cost Sharing or Matching:* To be eligible for an award, an eligible applicant must demonstrate that it has established one or more partnerships with an entity or organization in the private sector, which may include philanthropic organizations, and that the entity or organization in the private sector will provide matching funds in order to help bring project results to scale. An eligible applicant must obtain matching funds or in-kind donations equal to at least 10 percent of its grant award.[6] Selected eligible applicants must submit evidence of the full amount of private-sector matching funds following the peer review of applications. An award will not be made unless the applicant provides adequate evidence that the full amount of the private-sector match has been committed or the Secretary approves the eligible applicant's request to reduce the matching-level requirement.

The Secretary may consider decreasing the matching requirement in the most exceptional circumstances, on a case-by-case basis. An eligible applicant that anticipates being unable to meet the full amount of the private-sector matching requirement must include in its application a request to the Secretary to reduce the matching-level requirement, along with a statement of the basis for the request. (2010 i3 NFP, as revised by the 2011 Notice of Final i3 Revisions)

[6] The 2011 Notice of Final i3 Revisions modified the "Cost Sharing and Matching" requirement established in the 2010 i3 NFP by providing that the Secretary will specify the amount of required private-sector matching funds or in-kind donations in the notice inviting applications for the specific i3 competition. For this competition, the Secretary establishes a matching requirement of at least 10 percent of the grant award.

2. *Other:* The Secretary establishes the following requirements for the Investing in Innovation Fund. We may apply these requirements in any year in which this program is in effect.

• *Evidence Standards:* To be eligible for an award, an application for a Validation grant must be supported by moderate evidence (as defined in this notice). (2010 i3 NFP)

Note: Applicants should provide information addressing the required evidence standards in Appendix D, under "Other Attachments Form," of their applications.

• *Funding Categories:* An applicant must state in its application whether it is applying for a Scale-up, Validation, or Development grant. An applicant may not submit an application for the same proposed project under more than one type of grant. An applicant will be considered for an award only for the type of grant for which it applies. (2010 i3 NFP)

• *Subgrants:* In the case of an eligible applicant that is a partnership between a nonprofit organization and (1) One or more LEAs or (2) a consortium of schools, the partner serving as the applicant may make subgrants to one or more official partners (as defined in this notice). (2010 i3 NFP)

• *Limits on Grant Awards:* (a) No grantee may receive more than two new grant awards of any type under the i3 program in a single year; (b) In any two-year period, no grantee may receive more than one new Scale-up or Validation grant; and (c) No grantee may receive more than $55 million in new grant awards under the i3 program in a single year. (2010 i3 NFP, as revised by the 2011 Notice of Final i3 Revisions)

• *Evaluation:* A grantee must comply with the requirements of any evaluation of the program conducted by the Department. In addition, the grantee is required to conduct an independent evaluation (as defined in this notice) of its project and must agree, along with its independent evaluator, to cooperate with any technical assistance provided by the Department or its contractor. The purpose of this technical assistance will be to ensure that the evaluations are of the highest quality and to encourage commonality in evaluation approaches across funded projects where such commonality is feasible and useful. Finally, the grantee must make broadly available through formal (*e.g.*, peer-reviewed journals) or informal (*e.g.,* newsletters) mechanisms, and in print or electronically, the results of any evaluations it conducts of its funded activities. For Scale-up and Validation grants, the grantee must also ensure the data from their evaluations are made available to third-party researchers consistent with applicable privacy requirements. (2010 i3 NFP)

• *Participation in* "*Communities of Practice:*" Grantees are required to participate in, organize, or facilitate, as appropriate, communities of practice for the Investing in Innovation Fund. A community of practice is a group of grantees that agrees to interact regularly to solve a persistent problem or improve practice in an area that is important to them. Establishment of communities of practice under the Investing in Innovation Fund will enable grantees to meet, discuss, and collaborate with each other regarding grantee projects. (2010 i3 NFP)

IV. Application and Submission Information

1. *Submission of Proprietary Information:*

Given the types of projects that may be proposed in applications for the Investing in Innovation Fund, some applications may include proprietary information as it relates to confidential commercial information. Confidential commercial information is defined as information the disclosure of which could reasonably be expected to cause substantial competitive harm. Upon submission, applicants should identify any information contained in their application that they consider to be confidential commercial information. Consistent with the process followed in the FY 2010 i3 competition, we plan on posting the project narrative section of funded Validation applications on the Department's Web site. Identifying proprietary information in your application will help facilitate this public disclosure process.

Applicants are encouraged to identify only the specific information that the applicant considers to be proprietary and list the page numbers on which this information can be found in the appropriate Appendix section, under "Other Attachments Form," of their applications. In addition to identifying the page number on which that information can be found, eligible applicants will assist the Department in making determinations on public release of the application by being as specific as possible in identifying the information they consider proprietary. Please note that, in many instances, identification of entire pages of documentation would not be appropriate.

2. *Address To Request Application Package:*

You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www2.ed.gov/programs/innovation/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. *Fax:* (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.411B.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

3. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent To Apply: June 23, 2011.

We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application for funding by completing a web-based form. When completing this form, applicants will provide (1) The applicant organization's name and address, (2) the type of grant for which the applicant intends to apply, (3) the one absolute priority the applicant intends to address, and (4) a maximum of two of the competitive preference priorities the applicant wishes the Department to consider for purposes of earning the competitive preference priority points. Applicants may access this form online at *http://go.usa.gov/bsG.* Applicants that do not complete this form may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the application narrative [Part III] for a Validation application to no more than 35 pages. Applicants are also strongly encouraged not to include lengthy appendices that contain information

that could not be included in the narrative. Applicants should use the following standards:

• A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, 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 suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

4. *Submission Dates and Times:*

Applications Available: June 6, 2011.

Deadline for Notice of Intent To Apply: June 23, 2011.

Pre-Application Meeting: The i3 program intends to hold pre-application meetings designed to provide technical assistance to interested applicants for all three types of grants. Detailed information regarding the pre-application meeting locations, dates, and times will be provided in a separate notice in the **Federal Register**. Once the notice is published, it will be available, along with registration information, on the Investing in Innovation (i3) Web site at *http://www2.ed.gov/programs/innovation/index.html.*

Deadline for Transmittal of Applications: August 2, 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. 8. *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: October 3, 2011.

5. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

7. *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*).

8. *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 Investing in Innovation Fund, CFDA number 84.411B (Validation grants), 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 Investing in Innovation Fund 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 84.411, not 84.411B).

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 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov,* along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

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: Thelma Leenhouts, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W302, Washington, DC 20202–5900. *Fax:* (202) 401–8466.

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 84.411B), 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 84.411B), 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 competition are from the 2010 i3 NFP and from 34 CFR 75.210.[7] The points assigned to each criterion are indicated in the parenthesis next to the criterion. Applicants may earn up to a total of 100 points.

The selection criteria for the Validation grant competition are as follows:

[7] The 2011 Notice of Final i3 Revisions establishes that the Secretary may use one or more of the selection criteria established in the 2010 i3 NFP, any of the selection criteria in 34 CFR 75.210, criteria based on the statutory requirements for the i3 program in accordance with 34 CFR 75.209, or any combination of these when establishing selection criteria for each particular type of grant (Scale-up, Validation, and Development) in an i3 competition.

A. *Need for the Project (up to 25 points).*

The Secretary considers the need for the project.

In determining the need for the project, the Secretary considers the following factors:

(1) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(2) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

(3) The importance and magnitude of the effect expected to be obtained by the proposed project, including the extent to which the project will substantially and measurably improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and completion rates. The evidence in support of the importance and magnitude of the effect would be the research-based evidence provided by the eligible applicant to support the proposed project. (2010 i3 NFP)

Note Linking Magnitude of Effect to Presented Evidence: The Secretary notes that the extent to which the proposed project is consistent with the research evidence provided by the eligible applicant to support the proposed project is relevant to addressing the third factor of Selection Criterion A and, therefore, will be considered by the Secretary in evaluating the importance and/or magnitude of the impact expected to be obtained by the proposed project.

B. *Quality of the Project Design (up to 25 points).*

The Secretary considers the quality of the design of the proposed project.

In determining the quality of the project design, the Secretary considers the following factors:

(1) The extent to which the proposed project has a clear set of goals and an explicit strategy, with actions that are (a) Aligned with the priorities the eligible applicant is seeking to meet, and (b) expected to result in achieving the goals, objectives, and outcomes of the proposed project. (2010 i3 NFP)

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(3) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(4) The eligible applicant's estimate of the cost of the proposed project, which includes the start up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project. The eligible applicant must include an estimate of the costs for the eligible applicant or others (including other partners) to reach 100,000, 250,000, and 500,000 students. (2010 i3 NFP)

Note: The Secretary considers cost estimates both (a) To assess the reasonableness of the costs relative to the objectives, design, and potential significance for the total number of students to be served by the proposed project, which is determined by the eligible applicant, and (b) to understand the possible costs for the eligible applicant or others (including other partners) to reach the scaling targets of 100,000, 250,000, and 500,000 students for Validation grants. An eligible applicant is free to propose how many students it will serve under its project, and is expected to reach that number of students by the end of the grant period. The scaling targets, in contrast, are theoretical and allow peer reviewers to assess the cost-effectiveness generally of proposed projects, particularly in cases where initial investment may be required to support projects that operate at reduced cost in the future, whether implemented by the eligible applicant or any other entity. Grantees are not required to reach these numbers during the grant period.

(5) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the eligible applicant and any other partners at the end of the Validation grant. (2010 i3 NFP)

C. *Quality of Project Evaluation (up to 25 points).*

The Secretary considers the quality of the project evaluation.

In determining the quality of the project evaluation to be conducted, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will include a well-designed experimental study or a well-designed quasi-experimental study. (2010 i3 NFP)

(2) The extent to which the methods of evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes. (2010 i3 NFP)

(3) The extent to which the evaluation will provide sufficient information about the key elements and approach of the project so as to facilitate replication or testing in other settings. (2010 i3 NFP)

(4) The extent to which the proposed project plan includes sufficient resources to carry out the project evaluation effectively. (2010 i3 NFP)

Note: We encourage eligible applicants to review the following technical assistance resources on evaluation: (1) What Works

Clearinghouse Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1;* and (2) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.*

D. *Quality of the Management Plan and Personnel (up to 25 points).*

The Secretary considers the quality of the management plan and personnel for the proposed project.

In determining the quality of the management plan and personnel for the proposed project, the Secretary considers the following factors:

(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, as well as tasks related to the sustainability and scalability of the proposed project. (2010 i3 NFP)

(2) The qualifications, including relevant training and experience, of the project director and key project personnel, especially in managing complex projects. (2010 i3 NFP)

(3) The eligible applicant's capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale on a State or regional level (as appropriate, based on the results of the proposed project) working directly, or through other partners, either during or following the end of the grant period. (2010 i3 NFP)

2. *Review and Selection Process:* The Department will screen applications submitted in accordance with the requirements in this notice, and will determine which applications have met eligibility and other statutory requirements.

The Department will use independent reviewers from various backgrounds and professions including: pre-kindergarten-12 teachers and principals, college and university educators, researchers and evaluators, social entrepreneurs, strategy consultants, grant makers and managers, and others with education expertise. The Department will thoroughly screen all reviewers for conflicts of interest to ensure a fair and competitive review process.

Reviewers will read, prepare a written evaluation, and score the applications assigned to their panel, using the selection criteria provided in this notice. For Validation grant applications, the Department intends to conduct a two-tier review process to review and score all eligible applications. Reviewers will review and score all eligible Validation applications on the following three criteria: A. *Need for the Project;* B. *Quality of the Project Design;* D. *Quality of the Management Plan and Personnel.* If eligible applicants have chosen to address a maximum of two of the competitive preference priorities for purposes of earning the competitive preference priority points, reviewers will review and score those competitive preference priorities. If points are awarded, those points will be added to the eligible applicant's score. Eligible applications that score highly on these three criteria will then have the remaining criterion reviewed and scored by a different panel of reviewers. The remaining criterion is C. *Quality of the Project Evaluation.*

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:* The overall purpose of the Investing in Innovation program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth for high-need students. We have established several performance measures for the Investing in Innovation Validation grants.

Short-term performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of programs, practices, or strategies supported by a Validation grant with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes; (3) the percentage of programs, practices, or strategies supported by a Validation grant with ongoing evaluations that are providing high-quality implementation data and performance feedback that allow for periodic assessment of progress toward achieving intended outcomes; and (4) the cost per student actually served by the grant.

Long-term performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of programs, practices, or strategies supported by a Validation

grant that implement a completed well-designed, well-implemented and independent evaluation that provides evidence of their effectiveness at improving student outcomes; (3) the percentage of programs, practices, or strategies supported by a Validation grant with a completed well-designed, well-implemented and independent evaluation that provides information about the key elements and the approach of the project so as to facilitate replication or testing in other settings; and (4) the cost per student for programs, practices, or strategies that were proven to be effective at improving educational outcomes for students.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W302, Washington, DC 20202–5900. *Fax:* (202) 401–8466. *Telephone:* (202) 453–7122 or by *e-mail: http://www.i3@ed.gov.*

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: 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.* At this site 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). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 26, 2011.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2011–13594 Filed 6–2–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Investing in Innovation Fund

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information: Investing in Innovation Fund.

Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.411C (Development grants).

DATES:

Applications Available: June 6, 2011.

Deadline for Notice of Intent To Apply: June 23, 2011.

Deadline for Transmittal of Applications: August 2, 2011.

Deadline for Intergovernmental Review: October 3, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Investing in Innovation Fund, established under section 14007 of the American Recovery and Reinvestment Act of 2009 (ARRA), provides funding to support (1) local educational agencies (LEAs), and (2) nonprofit organizations in partnership with (a) one or more LEAs or (b) a consortium of schools. The purpose of this program is to provide competitive grants to applicants with a record of improving student achievement and attainment in order to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth (as defined in this notice), closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

These grants will (1) Allow eligible entities to expand and develop innovative practices that can serve as models of best practices, (2) allow eligible entities to work in partnership with the private sector and the philanthropic community, and (3) support eligible entities in identifying and documenting best practices that can be shared and taken to scale based on demonstrated success.

Under this program, the Department awards three types of grants: "Scale-up" grants, "Validation" grants, and "Development" grants. Applicants must specify the type of grant they are seeking at the time of application. Among the three grant types, there are differences in terms of the evidence that an applicant is required to submit in support of its proposed project; the expectations for "scaling up" successful projects during or after the grant period, either directly or through partners; and the funding that a successful applicant is eligible to receive. This notice invites applications for Development grants. Notices inviting applications for Validation and Scale-up grants are published elsewhere in this issue of the **Federal Register**.

Development grants provide funding to support high-potential and relatively untested practices, strategies, or programs whose efficacy should be systematically studied. An applicant must provide evidence that the proposed practice, strategy, or program, or one similar to it, has been attempted previously, albeit on a limited scale or in a limited setting, and yielded promising results that suggest that more formal and systematic study is warranted. An applicant must provide a rationale for the proposed practice, strategy, or program that is based on research findings or reasonable hypotheses, including related research or theories in education and other sectors. Thus, applications for Development grants do not need to provide the same level of evidence to support the proposed project as is required for Validation or Scale-up grants.

An applicant for a Development grant must estimate the number of students to be served by the project, and provide evidence of the applicant's ability to implement and appropriately evaluate the proposed project and, if positive results are obtained, its capacity (*e.g.,* qualified personnel, financial resources, management capacity) to further develop and bring the project to a larger scale directly or through partners either during or following the grant period. We recognize that LEAs are not typically responsible for taking to scale their practices, strategies, or programs. However, all applicants can and should partner with others to disseminate and take to scale their effective practices, strategies, and programs.

The Department will screen applications that are submitted for Development grants in accordance with the requirements in this notice, and determine which applications have met the eligibility and other requirements in

the notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 12, 2010 (75 FR 12004–12071) (2010 i3 NFP). Peer reviewers will review all eligible Development grant applications. However, if the Department determines that an application for a Development grant is not supported by a reasonable hypothesis for the proposed project, or any other eligibility requirement, the Department will not consider the application for funding.

Finally, we remind LEAs that participate in submitting an i3 application of the continuing applicability of the provisions of the Individuals with Disabilities Education Act (IDEA) to students who may be served under these awards. Programs proposed in applications in which LEAs participate must be consistent with the rights, protections, and processes of IDEA for students who are receiving special education and related services or are being evaluated for such services. As described later in this notice, in connection with making competitive grant awards, an applicant is required, as a condition of receiving assistance under this program, to make civil rights assurances, including an assurance that its program or activity will comply with Section 504 of the Rehabilitation Act of 1973 and the Department's Section 504 implementing regulations, which prohibit discrimination on the basis of disability. Regardless of whether students with disabilities are specifically targeted as "high-need" students under a particular application for a grant program, recipients are required to comply with the nondiscrimination requirements of these laws. Among other things, the nondiscrimination requirements of these laws include an obligation that recipients ensure that students with disabilities are not discriminated against because benefits provided to all students under the recipient's program are inaccessible to students because of their disability. The Department also enforces Title II of the Americans with Disabilities Act and Title II implementing regulations, which prohibit discrimination on the basis of disability by public entities, with respect to certain public educational entities.

Priorities: This competition includes five absolute priorities and five competitive preference priorities that are explained in the following paragraphs.[1] These priorities are from the 2010 i3 NFP and from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486–78511) (Supplemental Priorities).

Note on Removing Absolute Priority 2—Innovations That Improve the Use of Data: For this year's competition, the Secretary chooses not to use the priority *Innovations That Improve the Use of Data* (Absolute Priority 2 in the 2010 i3 NFP). This action is not intended to discourage applicants from proposing projects that improve the use of data, so long as the proposal addresses one of the absolute priorities in this notice. Specifically, proposed projects that address *Absolute Priority 1—Innovations That Support Effective Teachers and Principals, Absolute Priority 3—Innovations That Complement the Implementation of High Standards and High-Quality Assessments,* and *Absolute Priority 4—Innovations That Turn Around Persistently Low-Performing Schools* may also include using data in innovative ways to support the broader aims of the absolute priorities. The Secretary recognizes the importance of data collection, analysis, and use, and believes that focusing on these strategies in the context of the remaining absolute priorities meets the goals of the Investing in Innovation program and the overall education reform goals of ARRA.

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 one of these priorities. Under this competition for Development grants, each of the five absolute priorities constitutes its own funding category. The Secretary intends to award grants under each absolute priority for which applications of sufficient quality are submitted.

An applicant for a Development grant must choose one of the five absolute priorities contained in this notice and address that priority in its application. An applicant must provide information on how its proposed project addresses the selection criteria in the project narrative section of its application.

These priorities are:

Absolute Priority 1—Innovations That Support Effective Teachers and Principals

Under this priority, the Department provides funding to support practices, strategies, or programs that are designed to increase the number or percentages of teachers or principals who are highly effective teachers or principals or reduce the number or percentages of teachers or principals who are ineffective, especially for teachers of high-need students, by identifying, recruiting, developing, placing, rewarding, and retaining highly effective teachers or principals (or removing ineffective teachers or principals). In such initiatives, teacher or principal effectiveness should be determined through an evaluation system that is rigorous, transparent, and fair; performance should be differentiated using multiple rating categories of effectiveness; multiple measures of effectiveness should be taken into account, with data on student growth as a significant factor; and the measures should be designed and developed with teacher and principal involvement. (2010 i3 NFP)

Absolute Priority 2—Promoting Science, Technology, Engineering, and Mathematics (STEM) Education

Under this priority, the Department provides funding to support projects that are designed to address one or more of the following areas:

(a) Providing students with increased access to rigorous and engaging coursework in STEM.

(b) Increasing the number and proportion of students prepared for postsecondary or graduate study and careers in STEM.

(c) Increasing the opportunities for high-quality preparation of, or professional development for, teachers or other educators of STEM subjects.

(d) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are provided with access to rigorous and engaging coursework in STEM or who are prepared for postsecondary or graduate study and careers in STEM.

(e) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are teachers or educators of STEM subjects and have increased opportunities for high-quality preparation or professional development. (Supplemental Priorities)

Absolute Priority 3—Innovations That Complement the Implementation of High Standards and High-Quality Assessments

Under this priority, the Department provides funding for practices, strategies, or programs that are designed to support States' efforts to transition to standards and assessments that measure students' progress toward college- and

[1] The notice of final revisions to priorities, requirements, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**, establishes that the Secretary may use any of the priorities established in the 2010 i3 NFP when establishing the priorities for a particular Investing in Innovation competition.

career-readiness, including curricular and instructional practices, strategies, or programs in core academic subjects (as defined in section 9101(11) of the Elementary and Secondary Education Act of 1965, as amended (ESEA)) that are aligned with high academic content and achievement standards and with high-quality assessments based on those standards.[2] Proposed projects may include, but are not limited to, practices, strategies, or programs that are designed to: (a) Increase the success of under-represented student populations in academically rigorous courses and programs (such as Advanced Placement or International Baccalaureate courses; dual-enrollment programs; "early college high schools;" and science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities); (b) increase the development and use of formative assessments or interim assessments, or other performance-based tools and "metrics" that are aligned with high student content and academic achievement standards; or (c) translate the standards and information from assessments into classroom practices that meet the needs of all students, including high-need students.

Under this priority, an eligible applicant must propose a project that is based on standards that are at least as rigorous as its State's standards. If the proposed project is based on standards other than those adopted by the eligible applicant's State, the applicant must explain how the standards are aligned with and at least as rigorous as the eligible applicant's State's standards as well as how the standards differ. (2010 i3 NFP)

Absolute Priority 4—Innovations That Turn Around Persistently Low-Performing Schools

Under this priority, the Department provides funding to support strategies, practices, or programs that are designed to turn around schools that are in any of the following categories: (a) Persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program) [3]; (b) Title I schools that are in corrective action or restructuring under section 1116 of the ESEA; or (c) secondary schools (both middle and high schools) eligible for but not receiving Title I funds that, if receiving Title I funds, would be in corrective action or restructuring under section 1116 of the ESEA. These schools are referred to as Investing in Innovation Fund Absolute Priority 4 schools.

Proposed projects must include strategies, practices, or programs that are designed to turn around Investing in Innovation Fund Absolute Priority 4 schools through either whole-school reform or targeted approaches to reform. Applicants addressing this priority must focus on either:

(a) Whole-school reform, including, but not limited to, comprehensive interventions to assist, augment, or replace Investing in Innovation Fund Absolute Priority 4 schools, including the school turnaround, restart, closure, and transformation models of intervention supported under the Department's School Improvement Grants program (see Final Requirements for School Improvement Grants as Amended in January 2010 (January 28, 2010) at *http://www2.ed.gov/programs/sif/faq.html*); or

(b) Targeted approaches to reform, including, but not limited to: (1) Providing more time for students to learn core academic content by expanding or augmenting the school day, school week, or school year, or by increasing instructional time for core academic subjects (as defined in section 9101(11) of the ESEA); (2) integrating "student supports" into the school model to address non-academic barriers to student achievement; or (3) creating multiple pathways for students to earn regular high school diplomas (*e.g.,* by operating schools that serve the needs of over-aged, under-credited, or other students with an exceptional need for support and flexibility pertaining to when they attend school; awarding credit based on demonstrated evidence of student competency; and offering dual-enrollment options). (2010 i3 NFP)

Absolute Priority 5—Improving Achievement and High School Graduation Rates (Rural Local Educational Agencies)

Under this priority, the Department provides funding to support projects that are designed to address accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for students in rural local educational agencies (as defined in this notice). (Supplemental Priorities)

Note: The Secretary encourages applicants that choose to respond to Absolute Priority 5 to also address how their applications meet one of the other Absolute Priorities. In addition, applicants that choose to respond to Absolute Priority 5 should identify in the application and the i3 Applicant Information Sheet all rural LEAs (as defined in this notice) where the project will be implemented, or identify in the application how the applicant will choose any rural LEAs where the project will be implemented, and explain how the proposed innovative practices, strategies, or programs address the unique challenges of high-need students in schools within a rural LEA, resulting in accelerated learning and improved high school graduation and college enrollment rates. Applicants may also provide information on the applicant's experience and skills, or the experience and skills of their partners, in serving high-need students in rural LEAs in responding to Selection Criterion D. *Quality of the Management Plan and Personnel.*

Competitive Preference Priorities: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Applicants may address more than one of the competitive preference priorities; however, the Department will review and award points only for a maximum of two of the competitive preference priorities. Therefore, an applicant must identify in the project narrative section of its application the priority or priorities it wishes the Department to consider for purposes of earning the competitive preference priority points.

Note: The Department will not review or award points under any competitive preference priority for an application that (1) fails to clearly identify the competitive preference priorities it wishes the Department to consider for purposes of earning the competitive preference priority points, or (2) identifies more than two competitive preference priorities.

These priorities are:

[2] Consistent with the Race to the Top Fund, the Department interprets the core academic subject of "science" under section 9101(11) of the ESEA to include STEM education (science, technology, engineering, and mathematics) which encompasses a wide-range of disciplines, including computer science.

[3] Under the final requirements for the School Improvement Grants program, "persistently lowest-achieving schools" means, as determined by the State, (a) any Title I school in improvement, corrective action, or restructuring that (i) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (b) any secondary school that is eligible for, but does not receive, Title I funds that (i) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years. *See http://www2.ed.gov/programs/sif/faq.html.*

Competitive Preference Priority 6—Innovations for Improving Early Learning Outcomes (zero or one point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to improve educational outcomes for high-need students who are young children (birth through 3rd grade) by enhancing the quality of early learning programs. To meet this priority, applications must focus on (a) improving young children's school readiness (including social, emotional, and cognitive readiness) so that children are prepared for success in core academic subjects (as defined in section 9101(11) of the ESEA); (b) improving developmental milestones and standards and aligning them with appropriate outcome measures; and (c) improving alignment, collaboration, and transitions between early learning programs that serve children from birth to age three, in preschools, and in kindergarten through third grade. (2010 i3 NFP)

Competitive Preference Priority 7—Innovations That Support College Access and Success (zero or one point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to enable kindergarten through grade 12 (K–12) students, particularly high school students, to successfully prepare for, enter, and graduate from a two- or four-year college. To meet this priority, applications must include practices, strategies, or programs for K–12 students that (a) address students' preparedness and expectations related to college; (b) help students understand issues of college affordability and the financial aid and college application processes; and (c) provide support to students from peers and knowledgeable adults. (2010 i3 NFP).

Competitive Preference Priority 8—Innovations To Address the Unique Learning Needs of Students With Disabilities and Limited English Proficient Students (zero or one point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to address the unique learning needs of students with disabilities, including those who are assessed based on alternate academic achievement standards, or the linguistic and academic needs of limited English proficient students. To meet this priority, applications must provide for the implementation of particular practices, strategies, or programs that are designed to improve academic outcomes, close achievement gaps, and increase college- and career-readiness, including increasing high school graduation rates (as defined in this notice), for students with disabilities or limited English proficient students. (2010 i3 NFP).

Competitive Preference Priority 9—Improving Productivity (zero or one point)

We give competitive preference to applications for projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while *improving student learning or other educational outcomes (i.e.,* outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies. (Supplemental Priorities).

Competitive Preference Priority 10—Technology (zero or one point)

We give competitive preference to applications for projects that are designed to improve student achievement [4] or teacher effectiveness through the use of high-quality digital tools or materials, which may include preparing teachers to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials. (Supplemental Priorities)

Definitions: The Secretary establishes the following definitions for the Investing in Innovation Fund. We may apply these definitions in any year in which this program is in effect.

Note: This notice invites applications for Development grants. The following definitions apply to the three types of grants under the i3 program (Scale-up, Validation, or Development). Therefore, some definitions included in this section may be more applicable to applications for Scale-up and Validation grants.

Definitions Related to Evidence

Carefully matched comparison group design means a type of quasi-experimental study that attempts to approximate an experimental study. More specifically, it is a design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome. These characteristics include, but are not limited to: (1) Prior test scores and other measures of academic achievement (preferably, the same measures that the study will use to evaluate outcomes for the two groups); (2) demographic characteristics, such as age, disability, gender, English proficiency, ethnicity, poverty level, parents' educational attainment, and single- or two-parent family background; (3) the time period in which the two groups are studied (*e.g.,* the two groups are children entering kindergarten in the same year as opposed to sequential years); and (4) methods used to collect outcome data (*e.g.,* the same test of reading skills administered in the same way to both groups).

Experimental study means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to participate in a project being evaluated (treatment group) or not to participate in the project (control group). The effect of the project is the average difference in outcomes between the treatment and control groups.

Independent evaluation means that the evaluation is designed and carried out independent of, but in coordination with, any employees of the entities who develop a practice, strategy, or program and are implementing it. This independence helps ensure the objectivity of an evaluation and prevents even the appearance of a conflict of interest.

Interrupted time series design [5] means a type of quasi-experimental study in

[4] For purposes of this priority, the Supplemental Priorities define student achievement as follows:

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under section 1111(b)(3) of the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms; and

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms.

[5] A single subject or single case design is an adaptation of an interrupted time series design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population. In some single subject designs, treatment reversal or multiple baseline designs are used to increase internal validity. In a treatment reversal design, after a pretreatment or baseline outcome measurement is compared with a post treatment measure, the treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. A multiple baseline design

which the outcome of interest is measured multiple times before and after the treatment for program participants only. If the program had an impact, the outcomes after treatment will have a different slope or level from those before treatment. That is, the series should show an "interruption" of the prior situation at the time when the program was implemented. Adding a comparison group time series, such as schools not participating in the program or schools participating in the program in a different geographic area, substantially increases the reliability of the findings.

Moderate evidence means evidence from previous studies whose designs can support causal conclusions (i.e., studies with high internal validity) but have limited generalizability (*i.e.,* moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence: (1) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) supporting the effectiveness of the practice, strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability; (2) at least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or (3) correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

Quasi-experimental study means an evaluation design that attempts to approximate an experimental design and can support causal conclusions (*i.e.,* minimizes threats to internal validity, such as selection bias, or allows them to be modeled). Well-designed quasi-experimental studies include carefully matched comparison group designs (as defined in this notice), interrupted time series designs (as defined in this notice), or regression discontinuity designs (as defined in this notice).

Regression discontinuity design study means, in part, a quasi-experimental study design that closely approximates an experimental study. In a regression discontinuity design, participants are assigned to a treatment or comparison group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Another example would be assignment of eligible students, teachers, classrooms, or schools above a certain score ("cut score") to the treatment group and assignment of those below the score to the comparison group.

Strong evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (*i.e.,* studies with high external validity). The following are examples of strong evidence: (1) More than one well-designed and well-implemented (as defined in this notice) experimental study (as defined in this notice) or well-designed and well-implemented (as defined in this notice) quasi-experimental study (as defined in this notice) that supports the effectiveness of the practice, strategy, or program; or (2) one large, well-designed and well-implemented (as defined in this notice) randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

Well-designed and well-implemented means, with respect to an experimental or quasi-experimental study (as defined in this notice), that the study meets the What Works Clearinghouse evidence standards, with or without reservations (see *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1* and in particular the description of "Reasons for Not Meeting Standards" at *http://ies.ed.gov/ncee/wwc/references/idocviewer/Doc.aspx?docId=19&tocId=4#reasons*).

Other Definitions

Applicant means the entity that applies for a grant under this program on behalf of an eligible applicant (i.e., an LEA or a partnership in accordance with section 14007(a)(1)(B) of the ARRA).

Consortium of schools means two or more public elementary or secondary schools acting collaboratively for the purpose of applying for and implementing an Investing in Innovation Fund grant jointly with an eligible nonprofit organization.

Formative assessment means assessment questions, tools, and processes that are embedded in instruction and are used by teachers and students to provide timely feedback for purposes of adjusting instruction to improve learning.

Highly effective principal means a principal whose students, overall and for each subgroup as described in section 1111(b)(3)(C)(xiii) of the ESEA (i.e., economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender), achieve high rates (*e.g.,* one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that principal effectiveness is evaluated, in significant part, based on student growth. Supplemental measures may include, for example, high school graduation rates; college enrollment rates; evidence of providing supportive teaching and learning conditions, support for ensuring effective instruction across subject areas for a well-rounded education, strong instructional leadership, and positive family and community engagement; or evidence of attracting, developing, and retaining high numbers of effective teachers.

Highly effective teacher means a teacher whose students achieve high rates (*e.g.,* one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that teacher effectiveness is evaluated, in significant part, based on student growth. Supplemental measures may include, for example, multiple observation-based assessments of teacher performance or evidence of leadership roles (which may include mentoring or leading professional learning communities) that increase the effectiveness of other teachers in the school or LEA.

High-need student means a student at risk of educational failure, or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who are over-age and under-credited, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a regular high school diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are limited English proficient.

High school graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if

addresses concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

Interim assessment means an assessment that is given at regular and specified intervals throughout the school year, is designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and produces results that can be aggregated (*e.g.,* by course, grade level, school, or LEA) in order to inform teachers and administrators at the student, classroom, school, and LEA levels.

National level, as used in reference to a Scale-up grant, describes a project that is able to be effective in a wide variety of communities and student populations around the country, including rural and urban areas, as well as with the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender).

Nonprofit organization means an entity that meets the definition of "nonprofit" under 34 CFR 77.1(c), or an institution of higher education as defined by section 101(a) of the Higher Education Act of 1965, as amended.

Official partner means any of the entities required to be part of a partnership under section 14007(a)(1)(B) of the ARRA.

Other partner means any entity, other than the applicant and any official partner, that may be involved in a proposed project.

Regional level, as used in reference to a Scale-up or Validation grant, describes a project that is able to serve a variety of communities and student populations within a State or multiple States, including rural and urban areas, as well as with the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender). To be considered a regional-level project, a project must serve students in more than one LEA. The exception to this requirement would be a project implemented in a State in which the State educational agency is the sole educational agency for all schools and thus may be considered an LEA under section 9101(26) of the ESEA. Such a State would meet the definition of regional for the purposes of this notice.

Regular high school diploma means, consistent with 34 CFR 200.19(b)(1)(iv), the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General Education Development (GED) credential, certificate of attendance, or any alternative award.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under section 1111(b)(3) of the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms; and

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms.

Student growth means the change in student achievement data for an individual student between two or more points in time. Growth may be measured by a variety of approaches, but any approach used must be statistically rigorous and based on student achievement data, and may also include other measures of student learning in order to increase the construct validity and generalizability of the information.

Definition From Supplemental Priorities

Note: These definitions are from the Supplemental Priorities and apply to Absolute Priority 5 and Competitive Preference Priority 9.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Rural local educational agency means a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *http://www2.ed.gov/nclb/freedom/local/reap.html.*

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Section 14007, Pub. L. 111–5.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 12, 2010 (75 FR 12004–12071). (c) The notice of final revisions to priorities, requirements, and selection criteria for this program, published elsewhere in this issue of the **Federal Register** (2011 Notice of Final i3 Revisions). (d) The notice of final supplemental priorities and definitions for Discretionary Grant Programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486–78511).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreements or discretionary grants.

Estimated Available Funds: $148,200,000.

These estimated available funds are for all three types of grants under the i3 program (Scale-up, Validation, and Development).

Contingent upon the availability of funds and the quality of the applications received, we may make additional awards in FY 2012 or later years from the list of unfunded applicants from this competition.

Estimated Range of Awards:
Scale-up grants: Up to $25,000,000.
Validation grants: Up to $15,000,000.
Development grants: Up to $3,000,000.

Estimated Average Size of Awards:
Scale-up grants: $24,000,000.
Validation grants: $12,000,000.
Development grants: $2,800,000.

Estimated Number of Awards:
Scale-up grants: Up to 2 awards.
Validation grants: Up to 5 awards.
Development grants: Up to 15 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36–60 months.

III. Eligibility Information

1. *Providing Innovations that Improve Achievement for High-Need Students:* All eligible applicants must implement practices, strategies, or programs for high-need students (as defined in this notice). (2010 i3 NFP)

2. *Eligible Applicants:* Entities eligible to apply for Investing in Innovation

Fund grants include: (a) An LEA or (b) a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools. An eligible applicant that is a partnership applying under section 14007(a)(1)(B) of the ARRA must designate one of its official partners (as defined in this notice) to serve as the applicant in accordance with the Department's regulations governing group applications in 34 CFR 75.127 through 75.129. (2010 i3 NFP)

3. *Eligibility Requirements:* To be eligible for an award, an eligible applicant must—except as specifically set forth in the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* that follows:

(1)(A) Have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, students with disabilities); or

(B) Have demonstrated success in significantly increasing student academic achievement for all groups of students described in that section;

(2) Have made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data;

(3) Demonstrate that it has established one or more partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale; and

(4) In the case of an eligible applicant that includes a nonprofit organization, provide in the application the names of the LEAs with which the nonprofit organization will partner, or the names of the schools in the consortium with which it will partner. If an eligible applicant that includes a nonprofit organization intends to partner with additional LEAs or schools that are not named in the application, it must describe in the application the demographic and other characteristics of these LEAs and schools and the process it will use to select them as either official or other partners. An applicant must identify its specific partners before a grant award will be made. (2010 i3 NFP)

Note: Applicants should provide information addressing the eligibility requirements in Appendix C, under "Other Attachments Form," of their applications.

Note about LEA Eligibility: For purposes of this program, an LEA is an LEA located within one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico. (2010 i3 NFP).

Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization: The authorizing statute (as amended) specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements in paragraphs (1) and (2) of the eligibility requirements for this program if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. For an eligible applicant that includes a nonprofit organization, the nonprofit organization must demonstrate that it has a record of significantly improving student achievement, attainment, or retention through its record of work with an LEA or schools. Therefore, an eligible applicant that includes a nonprofit organization does not necessarily need to include as a partner for its Investing in Innovation Fund grant an LEA or a consortium of schools that meets the requirements in paragraphs (1) and (2).

In addition, the authorizing statute (as amended) specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements of paragraph (3) of the eligibility requirements in this notice if the eligible applicant demonstrates that it will meet the requirement relating to private-sector matching. (2010 i3 NFP).

1. *Cost Sharing or Matching:* To be eligible for an award, an eligible applicant must demonstrate that it has established one or more partnerships with an entity or organization in the private sector, which may include philanthropic organizations, and that the entity or organization in the private sector will provide matching funds in order to help bring project results to scale. An eligible applicant must obtain matching funds or in-kind donations equal to at least 15 percent of its grant award.[6] Selected eligible applicants must submit evidence of the full amount of private-sector matching funds following the peer review of applications. An award will not be made unless the applicant provides adequate evidence that the full amount of the private-sector match has been committed or the Secretary approves the eligible applicant's request to reduce the matching-level requirement.

The Secretary may consider decreasing the matching requirement in the most exceptional circumstances, on a case-by-case basis. An eligible applicant that anticipates being unable to meet the full amount of the private-sector matching requirement must include in its application a request to the Secretary to reduce the matching-level requirement, along with a statement of the basis for the request. (2010 i3 NFP, as revised by the 2011 Notice of Final i3 Revisions)

2. *Other:* The Secretary establishes the following requirements for the Investing in Innovation Fund. We may apply these requirements in any year in which this program is in effect.

- *Evidence Standards:* To be eligible for an award, an application for a Development grant must be supported by a reasonable hypothesis. (2010 i3 NFP)

Note: Applicants should provide information addressing the required evidence standards in Appendix D, under "Other Attachments Form," of their applications.

- *Funding Categories:* An applicant must state in its application whether it is applying for a Scale-up, Validation, or Development grant. An applicant may not submit an application for the same proposed project under more than one type of grant. An applicant will be considered for an award only for the type of grant for which it applies. (2010 i3 NFP)
- *Subgrants:* In the case of an eligible applicant that is a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools, the partner serving as the applicant may make subgrants to one or more official partners (as defined in this notice). (2010 i3 NFP)
- *Limits on Grant Awards:* (a) No grantee may receive more than two new grant awards of any type under the i3 program in a single year; (b) In any two-year period, no grantee may receive more than one new Scale-up or Validation grant; and (c) No grantee may receive more than $55 million in new grant awards under the i3 program in a single year. (2010 i3 NFP, as revised by the 2011 Notice of Final i3 Revisions)
- *Evaluation:* A grantee must comply with the requirements of any evaluation of the program conducted by the Department. In addition, the grantee is required to conduct an independent evaluation (as defined in this notice) of its project and must agree, along with its independent evaluator, to cooperate with any technical assistance provided by the Department or its contractor. The purpose of this technical assistance will be to ensure that the evaluations are of the highest quality and to encourage commonality in evaluation approaches across funded projects where such

[6] The 2011 Notice of Final i3 Revisions modified the "Cost Sharing and Matching" requirement established in the 2010 i3 NFP by providing that the Secretary will specify the amount of required private-sector matching funds or in-kind donations in the notice inviting applications for the specific i3 competition. For this competition, the Secretary establishes a matching requirement of at least 15 percent of the grant award.

commonality is feasible and useful. Finally, the grantee must make broadly available through formal (*e.g.,* peer-reviewed journals) or informal (*e.g.,* newsletters) mechanisms, and in print or electronically, the results of any evaluations it conducts of its funded activities. For Scale-up and Validation grants, the grantee must also ensure the data from their evaluations are made available to third-party researchers consistent with applicable privacy requirements. (2010 i3 NFP)

• *Participation in* "*Communities of Practice*"*:* Grantees are required to participate in, organize, or facilitate, as appropriate, communities of practice for the Investing in Innovation Fund. A community of practice is a group of grantees that agrees to interact regularly to solve a persistent problem or improve practice in an area that is important to them. Establishment of communities of practice under the Investing in Innovation Fund will enable grantees to meet, discuss, and collaborate with each other regarding grantee projects. (2010 i3 NFP).

IV. Application and Submission Information

1. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Investing in Innovation Fund, some applications may include proprietary information as it relates to confidential commercial information. Confidential commercial information is defined as information the disclosure of which could reasonably be expected to cause substantial competitive harm. Upon submission, applicants should identify any information contained in their application that they consider to be confidential commercial information. Consistent with the process followed in the FY 2010 i3 competition, we plan on posting the project narrative section of funded Development applications on the Department's Web site. Identifying proprietary information in your application will help facilitate this public disclosure process. Applicants are encouraged to identify only the specific information that the applicant considers to be proprietary and list the page numbers on which this information can be found in the appropriate Appendix section, under "Other Attachments Form," of their applications. In addition to identifying the page number on which that information can be found, eligible applicants will assist the Department in making determinations on public release of the application by being as specific as possible in identifying the information they consider proprietary. Please note that, in many instances, identification of entire pages of documentation would not be appropriate.

2. *Address To Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www2.ed.gov/programs/innovation/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.411C.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

3. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent To Apply: June 23, 2011.

We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application for funding by completing a web-based form. When completing this form, applicants will provide (1) The applicant organization's name and address, (2) the type of grant for which the applicant intends to apply, (3) the one absolute priority the applicant intends to address, and (4) a maximum of two of the competitive preference priorities the applicant wishes the Department to consider for purposes of earning the competitive preference priority points. Applicants may access this form online at *http://go.usa.gov/bsG.* Applicants that do not complete this form may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the application narrative [Part III] for a Development application to no more than 25 pages. Applicants are also strongly encouraged not to include lengthy appendices that contain information that could not be included in the narrative. Applicants should use the following standards:

• A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, 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 suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

4. *Submission Dates and Times:*

Applications Available: June 6, 2011.

Deadline for Notice of Intent To Apply: June 23, 2011.

Pre-Application Meeting: The i3 program intends to hold pre-application meetings designed to provide technical assistance to interested applicants for all three types of grants. Detailed information regarding the pre-application meeting locations, dates, and times will be provided in a separate notice in the **Federal Register**. Once the notice is published, it will be available, along with registration information, on the Investing in Innovation (i3) Web site at *http://www2.ed.gov/programs/innovation/index.html.*

Deadline for Transmittal of Applications: August 2, 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. 8. *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: October 3, 2011.

5. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

7. *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*).

8. *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 Investing in Innovation Fund, CFDA number 84.411C (Development grants), 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 Investing in Innovation Fund 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 84.411, not 84.411C).

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: Thelma Leenhouts, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W302, Washington, DC 20202–5900. FAX: (202) 401–8466.

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 84.411C),
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 84.411C),
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 competition are from the 2010 i3 NFP and from 34 CFR 75.210.[7]

[7] The 2011 Notice of Final i3 Revisions establishes that the Secretary may use one or more of the selection criteria established in the 2010 i3 NFP, any of the selection criteria in 34 CFR 75.210, criteria based on the statutory requirements for the i3 program in accordance with 34 CFR 75.209, or

The points assigned to each criterion are indicated in the parenthesis next to the criterion. Applicants may earn up to a total of 100 points.

The selection criteria for the Development grant competition are as follows:

A. *Need for the Project (up to 35 points).*

The Secretary considers the need for the project.

In determining the need for the project, the Secretary considers the following factors:

(1) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

(2) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(3) The extent to which the eligible applicant demonstrates that, if funded, the proposed project likely will have a positive impact, as measured by the importance or magnitude of the effect, on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates. (2010 i3 NFP).

B. *Quality of the Project Design (up to 25 points).*

The Secretary considers the quality of the design to be conducted of the proposed project.

In determining the quality of the project design, the Secretary considers the following factors:

(1) The extent to which the proposed project has a clear set of goals and an explicit strategy, with actions that are (a) aligned with the priorities the eligible applicant is seeking to meet, and (b) expected to result in achieving the goals, objectives, and outcomes of the proposed project. (2010 i3 NFP).

(2) The eligible applicant's estimate of the cost of the proposed project, which includes the start up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project. The eligible applicant must include an estimate of the costs for the eligible applicant or others (including other partners) to reach 100,000, 250,000, and 500,000 students. (2010 i3 NFP).

any combination of these when establishing selection criteria for each particular type of grant (Scale-up, Validation, and Development) in an i3 competition.

Note: The Secretary considers cost estimates both (a) to assess the reasonableness of the costs relative to the objectives, design, and potential significance for the total number of students to be served by the proposed project, which is determined by the eligible applicant, and (b) to understand the possible costs for the eligible applicant or others (including other partners) to reach the scaling targets of 100,000, 250,000, and 500,000 students for Development grants. An eligible applicant is free to propose how many students it will serve under its project, and is expected to reach that number of students by the end of the grant period. The scaling targets, in contrast, are theoretical and allow peer reviewers to assess the cost-effectiveness generally of proposed projects, particularly in cases where initial investment may be required to support projects that operate at reduced cost in the future, whether implemented by the eligible applicant or any other entity. Grantees are not required to reach these numbers during the grant period.

(3) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(4) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the eligible applicant and any other partners at the end of the Development grant. (2010 i3 NFP).

C. *Quality of Project Evaluation (up to 20 points).*

The Secretary considers the quality of the project evaluation.

In determining the quality of the project evaluation to be conducted, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes. (2010 i3 NFP).

(2) The extent to which the evaluation will provide sufficient information about the key elements and approach of the project to facilitate further development, replication, or testing in other settings. (2010 i3 NFP).

(3) The extent to which the proposed project plan includes sufficient resources to carry out the project evaluation effectively. (2010 i3 NFP).

Note: We encourage eligible applicants to review the following technical assistance resources on evaluation: (1) What Works Clearinghouse Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1;* and (2) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.*

D. *Quality of the Management Plan and Personnel (up to 20 points).*

The Secretary considers the quality of the management plan and personnel for the proposed project.

In determining the quality of the management plan and personnel for the proposed project, the Secretary considers the following factors:

(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, as well as tasks related to the sustainability and scalability of the proposed project. (2010 i3 NFP)

(2) The qualifications, including relevant training and experience, of the project director and key project personnel, especially in managing projects of the size and scope of the proposed project.

2. *Review and Selection Process:* The Department will screen applications submitted in accordance with the requirements in this notice, and will determine which applications have met eligibility and other statutory requirements.

The Department will use independent reviewers from various backgrounds and professions including: pre-kindergarten-12 teachers and principals, college and university educators, researchers and evaluators, social entrepreneurs, strategy consultants, grant makers and managers, and others with education expertise. The Department will thoroughly screen all reviewers for conflicts of interest to ensure a fair and competitive review process.

Reviewers will read, prepare a written evaluation, and score the applications assigned to their panel, using the selection criteria provided in this notice. For Development grant applications, the Department intends to conduct a two-tier review process to review and score all eligible applications. Reviewers will review and score all eligible Development applications on the following three criteria: A. *Need for the Project;* B. *Quality of the Project Design;* D. *Quality of the Management Plan and Personnel.* If eligible applicants have chosen to address a maximum of two of the competitive preference priorities for purposes of earning the competitive preference priority points, reviewers will review and score those competitive preference priorities. If points are awarded, those points will be added to the eligible applicant's score. Eligible applications that score highly on these three criteria will then have the remaining criterion reviewed and scored by a different panel of reviewers. The

remaining criterion is C. *Quality of the Project Evaluation.*

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:* The overall purpose of the Investing in Innovation program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth for high-need students. We have established several performance measures for the Investing in Innovation Development grants.

Short-term performance measures: (1) The percentage of grantees whose projects are being implemented with fidelity to the approved design; (2) the percentage of programs, practices, or strategies supported by a Development grant with ongoing evaluations that provide evidence of their promise for improving student outcomes; (3) the percentage of programs, practices, or strategies supported by a Development grant with ongoing evaluations that are providing high-quality implementation data and performance feedback that allow for periodic assessment of progress toward achieving intended outcomes; and (4) the cost per student actually served by the grant.

Long-term performance measures: (1) The percentage of programs, practices, or strategies supported by a Development grant with a completed evaluation that provides evidence of their promise for improving student outcomes; (2) the percentage of programs, practices, or strategies supported by a Development grant with a completed evaluation that provides information about the key elements and approach of the project so as to facilitate further development, replication, or testing in other settings; and (3) the cost per student for programs, practices, or strategies that were proven promising at improving educational outcomes for students.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W302, Washington, DC 20202–5900. FAX: (202) 401–8466. Telephone: (202) 453–7122 or by e-mail: *i3@ed.gov.*

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: 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.* At this site 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). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 26, 2011.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2011–13596 Filed 6–2–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–87–000.

Applicants: Sherbino II Wind Farm LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Sherbino II Wind Farm LLC.

Filed Date: 05/26/2011.

Accession Number: 20110526–5128.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1790–001; ER11–2029–002; ER10–1821–002; ER10–2598–001.

Applicants: BP Energy Company, Rolling Thunder I Power Partners, LLC, Goshen Phase II LLC, Cedar Creek II, LLC.

Description: Supplemental Information Regarding Updated Market Power Analysis.

Filed Date: 05/26/2011.

Accession Number: 20110526–5151.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Docket Numbers: ER11–3028–002.

Applicants: BBPC, LLC.

Description: BBPC, LLC submits tariff filing per 35.17(b): BBPC LLC Second Substitute MBR Tariff to be effective 5/16/2011.

Filed Date: 05/25/2011.

Accession Number: 20110525–5037.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 15, 2011.

Docket Numbers: ER11–3376–001.

Applicants: North Hurlburt Wind, LLC.

Description: North Hurlburt Wind, LLC submits tariff filing per 35.17(b): NH Amendment to MBR to Include Docket Number to be effective 6/17/2011.

Filed Date: 05/26/2011.

Accession Number: 20110526–5075.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Docket Numbers: ER11–3377–001.

Applicants: Horseshoe Bend Wind, LLC.

Description: Horseshoe Bend Wind, LLC submits tariff filing per 35.17(b): HB Amendment to MBR to Include Docket Number to be effective 6/17/2011.

Filed Date: 05/26/2011.

Accession Number: 20110526–5069.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Docket Numbers: ER11–3378–001.

Applicants: South Hurlburt Wind, LLC.

Description: South Hurlburt Wind, LLC submits tariff filing per 35.17(b): SH Amendment to MBR to Include Docket Number to be effective 6/17/2011.

Filed Date: 05/26/2011.

Accession Number: 20110526–5078.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Docket Numbers: ER11–3639–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Revisions to the PJM Tariff Schedule 9—MMU Funding to be effective 8/1/2011.

Filed Date: 05/25/2011.

Accession Number: 20110525–5078.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 15, 2011.

Docket Numbers: ER11–3640–000.

Applicants: Midwest Independent Transmission System, International Transmission Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 05–25–11 ITC Attachment GG revisions to be effective 7/25/2011.

Filed Date: 05/25/2011.

Accession Number: 20110525–5088.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 15, 2011.

Docket Numbers: ER11–3642–000.

Applicants: Tanner Street Generation, LLC.

Description: Tanner Street Generation, LLC submits tariff filing per 35.12: Market-Based Rate Tariff to be effective 5/26/2011.

Filed Date: 05/25/2011.

Accession Number: 20110525–5089.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 15, 2011.

Docket Numbers: ER11–3643–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits tariff filing per 35.13(a)(1): OATT Formula Rate to be effective 7/25/2011.

Filed Date: 05/26/2011.

Accession Number: 20110526–5002.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Docket Numbers: ER11–3644–000.

Applicants: Project Orange Associates, LLC.

Description: Project Orange Associates, LLC Notice of Cancellation of FERC Electric Tariff to be effective May 31, 2011.

Filed Date: 05/25/2011.

Accession Number: 20110525–5112.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 15, 2011.

Docket Numbers: ER11–3645–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue No. W2–090; Original Service Agreement No. 2922 to be effective 5/2/2011.

Filed Date: 05/26/2011.

Accession Number: 20110526–5061.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Docket Numbers: ER11–3646–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue No. W1–124; Original Service Agreement No. 2926 to be effective 5/10/2011.

Filed Date: 05/26/2011.

Accession Number: 20110526–5062.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Docket Numbers: ER11–3647–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue No. W2–084; Original Service Agreement No. 2927 to be effective 5/10/2011.

Filed Date: 05/26/2011.

Accession Number: 20110526–5063.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Docket Numbers: ER11–3648–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue No. W2–085; Original Service Agreement No. 2928 to be effective 5/10/2011.

Filed Date: 05/26/2011.

Accession Number: 20110526–5064.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Docket Numbers: ER11–3649–000.

Applicants: Avista Corporation.

Description: Avista Corporation submits tariff filing per 35.12: Service Agreement T1087—E and P Agreement to be effective 5/27/2011.

Filed Date: 05/26/2011.

Accession Number: 20110526–5135.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–35–000.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Application for Authorization to Assume Obligations with Respect to Securities Under Section 204 of the Federal Power Act of Wolverine Power Supply Cooperative, Inc.

Filed Date: 05/26/2011.

Accession Number: 20110526–5129.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene

again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 26, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–13769 Filed 6–2–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Number*s: RP11–1820–000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits tariff filing per: TRA 2011 Supplemental Filing to be effective N/A.

Description: 04/18/2011.

Accession Number: 20110418–5195.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2011.

*Docket Number*s: RP11–2099–000.

Applicants: Freebird Gas Storage, L.L.C.

Description: Freebird Gas Storage, L.L.C. submits tariff filing per 154.205(a): Freebird Gas Storage Withdrawal of Correction Filing to be effective N/A.

Description: 05/24/2011.

Accession Number: 20110524–5078.

Comment Date: 5 p.m. Eastern Time on Monday, June 06, 2011.

*Docket Number*s: RP10–1410–002.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits tariff filing per 154.203: Rev 2011 Reservation Charge Credits Compliance Filing 05_19_11 (RP10–1410) to be effective 12/1/2010.

Description: 05/19/2011.

Accession Number: 20110519–5083.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2011.

Docket Numbers: RP11–60–003.

Applicants: Southern Natural Gas Company.

Description: Southern Natural Gas Company submits tariff filing per 154.203: Miscellaneous Compliance Filing 2 (Reservation Charge Credits) to be effective 7/1/2011.

Description: 05/23/2011.

Accession Number: 20110523–5128.

Comment Date: 5 p.m. Eastern Time on Monday, June 06, 2011.

*Docket Number*s: RP11–2021–001.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company, LLC submits tariff filing per 154.203: Housekeeping Compliance to be effective 5/20/2011.

Description: 05/25/2011.

Accession Number: 20110525–5026.

Comment Date: 5 p.m. Eastern Time on Monday, June 06, 2011.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before *5 p.m.* Eastern time on the specified *comment date.* Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the *W*eb site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–13772 Filed 6–2–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3401–001.

Applicants: Golden Spread Panhandle Wind Ranch, LLC.

Description: Golden Spread Panhandle Wind Ranch, LLC submits

tariff filing per 35.17(b): Market-Based Rate Application Amendment to be effective 6/15/2011.

Filed Date: 05/27/2011.

Accession Number: 20110527–5136.

Comment Date: 5 p.m. Eastern Time on Friday, June 10, 2011.

Docket Numbers: ER11–3641–000.

Applicants: Alcoa Power Generating, Inc.

Description: Alcoa Power Generating, Inc. submits two agreements it has entered into with Tennessee Valley Authority.

Filed Date: 05/23/2011.

Accession Number: 20110523–5158.

Comment Date: 5 p.m. Eastern Time on Monday, June 13, 2011.

Docket Numbers: ER11–3650–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 607R13 Westar Energy, Inc. NITSA and NOA to be effective 5/1/2011.

Filed Date: 05/26/2011.

Accession Number: 20110526–5179.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Docket Numbers: ER11–3651–000.

Applicants: PJM Interconnection, L.L.C., American Electric Power Service Corporation.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): AEP submits a 26th revision to the AEPSC & Buckeye ILDSA under SA No. 1336 to be effective 5/16/2011.

Filed Date: 05/26/2011.

Accession Number: 20110526–5181.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Docket Numbers: ER11–3652–000.

Applicants: National Grid Generation LLC.

Description: National Grid Generation LLC submits tariff filing per 35.13(a)(2)(iii): National Grid Generation Rate Schedule No. 1 Filing to be effective 5/27/2011.

Filed Date: 05/26/2011.

Accession Number: 20110526–5193.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Docket Numbers: ER11–3653–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits tariff filing per 35.12: FPL and OUC Service Agreement No. 297 to be effective 8/1/2011.

Filed Date: 05/26/2011.

Accession Number: 20110526–5197.

Comment Date: 5 p.m. Eastern Time on Thursday, June 16, 2011.

Docket Numbers: ER11–3654–000.

Applicants: Wisconsin Power and Light Company.

Description: Wisconsin Power and Light Company submits tariff filing per 35.13(a)(2)(iii): WPL ACEC Wholesale Power Agreement Amendment to be effective 2/25/2011.

Filed Date: 05/27/2011.

Accession Number: 20110527–5089.

Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2011.

Docket Numbers: ER11–3655–000.

Applicants: Midwest Independent Transmission System, Operator, Inc., MidAmerican Energy Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): MidAmerican-MEAN Waverly WDS SA2164 to be effective 6/1/2011.

Filed Date: 05/27/2011.

Accession Number: 20110527–5092.

Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2011.

Docket Numbers: ER11–3656–000.

Applicants: Midwest Independent Transmission System Operator, Inc., MidAmerican Energy Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): MidAmerican-MEAN Breda WDS SA2340 to be effective 6/1/2011.

Filed Date: 05/27/2011.

Accession Number: 20110527–5094.

Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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Dated: May 27, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–13771 Filed 6–2–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–3559–003.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company Notice of Change in Status.
Filed Date: 05/27/2011.
Accession Number: 20110527–5202.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2011.

Docket Numbers: ER11–3391–001.
Applicants: Dempsey Ridge Wind Farm, LLC.
Description: Dempsey Ridge Wind Farm, LLC submits tariff filing per 35.17(b): Supplement to Market-Based Rate Tariff to be effective 10/1/2011.
Filed Date: 05/27/2011.
Accession Number: 20110527–5158.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2011.

Docket Numbers: ER11–3414–001.
Applicants: Blue Canyon Windpower VI LLC.
Description: Blue Canyon Windpower VI LLC submits tariff filing per 35.17(b): Blue Canyon Windpower VI LLC First Substitute MBR Tariff to be effective 6/20/2011.
Filed Date: 05/27/2011.
Accession Number: 20110527–5191.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2011.

Docket Numbers: ER11–3658–000.
Applicants: Entergy Services, Inc.
Description: Entergy Operating Companies submits for filing the rates to implement the decision of the Commission as contained in Opinion 480 and 480A.
Filed Date: 05/27/2011.
Accession Number: 20110527–0201.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2011.

Docket Numbers: ER11–3659–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation Notice of Cancellation of Partial Requirements Service Agreement with FMPA.
Filed Date: 05/27/2011.
Accession Number: 20110527–5145.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2011.

Docket Numbers: ER11–3660–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation Notice of Cancellation of Partial Requirements Resale Service Agreement with New Smyrna Beach.
Filed Date: 05/27/2011.
Accession Number: 20110527–5146.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2011.

Docket Numbers: ER11–3661–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation Notice of Cancellation of All Requirements Agreement with City of Williston.
Filed Date: 05/27/2011.
Accession Number: 20110527–5172.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2011.

Docket Numbers: ER11–3662–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits tariff filing per 35.13(a)(2)(iii: 2011_05_27_SPS TCEC–GSEC–Chaparral NDP_642–SPS to be effective 5/28/2011.
Filed Date: 05/27/2011.
Accession Number: 20110527–5178.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2011.

Docket Numbers: ER11–3663–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 205 Mnstrl Flng Rnstt 2012 Effctv Dt PJM JOA to be effective 7/25/2011.
Filed Date: 05/27/2011.
Accession Number: 20110527–5190.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2011.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA11–8–000.
Applicants: Dempsey Ridge Wind Farm, LLC.
Description: Application of Dempsey Ridge Wind Farm, LLC for waivers of FERC's Open Access Transmission Tariff, OASIS, and Standards of Conduct requirements.
Filed Date: 05/27/2011.
Accession Number: 20110527–5201.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 27, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–13773 Filed 6–2–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–480–000]

Central New York Oil and Gas Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Marc I Hub Line Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Marc I Hub Line Project proposed by Central New York Oil and Gas Company, LLC (CNYOG) in the above-referenced docket. CNYOG requests authorization to construct and operate about 39 miles of 30-inch-diameter pipeline; a 15,300-horsepower (hp) compressor addition at CNYOG's NS2 Compressor Station; a new 16,360-hp compressor station (the M1–S Compressor Station); two meter stations; and related facilities in Bradford, Sullivan, and Lycoming Counties, Pennsylvania.

The EA assesses the potential environmental effects of the construction and operation of the MARC I Hub Line 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 MARC I Hub Line Project includes the following facilities:

- 39 miles of 30-inch-diameter pipeline in Bradford, Lycoming, and Sullivan Counties;
- The 15,300-horsepower (hp) Northern Compressor Unit (M1–N) at CNYOG's NS2 Compressor Station, in Bradford County;
- The 16,360-hp Southern Compressor Unit (M1–S Compressor Station) in Sullivan County;
- The Northern Meter Station, in Bradford County;
- The Southern Meter Station, in Lycoming County.

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; environmental and public interest groups; 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 June 27, 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 (CP10–480–000) 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.

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.,* CP10–480–000). 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: May 27, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–13782 Filed 6–2–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–3635–000]

Hatch Solar Energy Center 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Hatch Solar Energy Center 1, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 15, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 26, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–13770 Filed 6–2–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–3642–000]

Tanner Street Generation, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Tanner Street Generation, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 15, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 27, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–13781 Filed 6–2–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2011–0314; FRL–8873–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (*i.e.,* a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from December 3, 2010 to January 31, 2011, and provides the required notice and status report, consists of the PMNs pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before July 5, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID)

number EPA–HQ–OPPT–2011–0314, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–8951; *fax number:* (202) 564–8955; *e-mail address: mudd.bernice@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; *telephone number:* (202) 554–1404; *e-mail address: TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. 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. Why is EPA taking this action?

EPA classifies a chemical substance as either an "existing" chemical or a "new" chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a "new chemical," while those that are on the TSCA Inventory are classified as an "existing chemical." For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA

section 5(a), for "test marketing" purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://ww.epa.gov/opt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from December 3, 2010 to January 31, 2011, consists of the PMNs pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—99 PMNS RECEIVED FROM DECEMBER 3, 2010 TO JANUARY 31, 2010

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–11–0091	12/03/10	03/02/11	CBI	(G) Oil and water repellant and release agent.	(G) Fluorinated acrylic alkylamino copolymer.
P–11–0092	12/03/10	03/02/11	CBI	(G) Oil and water repellant and release agent.	(G) Fluorinated acrylic alkylamino copolymer.
P–11–0093	12/03/10	03/02/11	CBI	(G) Oil and water repellant and release agent.	(G) Fluorinated acrylic alkylamino copolymer.
P–11–0094	12/07/10	03/06/11	CBI	(G) Dispersion additive	(G) 2-naphthalenecarboxylic acid, substituted diazenyl calcium salt.
P–11–0095	12/08/10	03/07/11	Hybrid Plastics, Inc..	(G) 1. Thermoplastics and coatings additive; 2. Elastomer additive.	(S) Tricyclo[7.3.3.15,11]heptasiloxane-3,7,14-triol, 1,3,5,7,9,11,14-heptaphenyl.
P–11–0096	12/08/10	03/07/11	AOC LLC	(S) Polymer component for laminating of fiberglass reinforced plastic parts.	(S) 1,4-benzenedicarboxylic acid, 1,4-dimethyl ester, polymer with 1,4-cyclohexanedimethanol and 2,2,4,4-tetramethyl-1,3-cyclobutanediol, manuf. of, by-products from, reaction products with ethylene glycol, polymers with 1,4-cyclohexanedimethanol, diethylene glycol, ethylene glycol, maleic anhydride and phthalic anhydride, 3a,4,5,6,7,7a-hexahydro-4,7-methano-1h-inden-5(or 6)-yl esters.
P–11–0097	12/09/10	03/08/11	Reichhold, Inc..	(S) Carrier resin for paints and coatings.	(G) Amine salt of vegetable oils, polymer with alkanedioic acid, amino substituted alcohol, hydroxy substituted carboxylic acid, alkanediol, isocyanates, hydroxy substituted alkane and tetra hydroxy alkane.
P–11–0098	12/09/10	03/08/11	CBI	(G) Epoxy catalyst	(S) Phenol, 2-[1-[[3-(1h-imidazol-1-yl)propyl]imino]ethyl]-
P–11–0099	12/13/10	03/12/11	Huntsman Textile Effects.	(S) Exhaust dyeing of cotton fabrics.	(G) Condensation sodium/potassium salt reaction product of substituted naphthalene sulfonic acid azo substituted phenyl amino substituted triazine and alkylsulfonyl benzenesulfonic acid azo substituted phenylamino substituted triazine.
P–11–0100	12/10/10	03/09/11	CBI	(G) Scale inhibitor for subterranean oilfield brines.	(G) Organicsulfonic acid, sodium salt, polymer with 2,5-furandione, 2-methyl-2-propenoic acid and 2-propenoic acid, sodium salt, hydrogen peroxide- and peroxydisulfuric acid ([(ho)s(o)2o2 sodium salt (1:2)-initiated.
P–11–0101	12/10/10	03/09/11	CBI	(G) Scale inhibitor for subterranean oilfield brines.	(G) Organicsulfonic acid, sodium salt, polymer with 2,5-furandione, 2-methyl-2-propenoic acid and 2-propenoic acid, ammonium salt, hydrogen peroxide- and peroxydisulfuric acid ([(ho)s(o)2]2o2) sodium salt (1:2)-initiated.

TABLE I—99 PMNS RECEIVED FROM DECEMBER 3, 2010 TO JANUARY 31, 2010—Continued

Case No.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P–11–0102	12/10/10	03/09/11	CBI	(G) Scale inhibitor for subterranean oilfield brines.	(G) Organicsulfonic acid, sodium salt, polymer with 2,5-furandione, methyl 2-methyl-2-propenoate, 2-methyl-2-propenoic acid, 2-propenoic acid, sodium 4-ethylbenzene sulfonate (1:1) and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfoate (1:1), sodium salt, hydrogen peroxide- and peroxydisulfuric acid ([(ho)s(o)2]2o2) sodium salt (1:2)-initiated.
P–11–0103	12/10/10	03/09/11	CBI	(G) Scale inhibitor for subterranean oilfield brines.	(G) Organicsulfonic acid, sodium salt, polymer with 2,5-furandione, methyl 2-methyl-2-propenoate, 2-methyl-2-propenoic acid, 2-propenoic acid, sodium 4-ethenylbenzene sulfonate (1:1) and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate(1:1)ammonium salt, hydrogen peroxide- and peroxydisulfuric acid ([(ho)s(o)2]2o2) sodium salt (1:2)-initiated.
P–11–0104	12/10/10	03/09/11	CBI	(G) Scale inhibitor for subterranean oilfield brines.	(G) Organicsulfonic acid, sodium salt, polymer with 1-methyl hydrogen (2z)-2-butenedioate, 2-methyl-2-propenoic acid, 1,2-propanedoil mono(2-methyl-2-propenoate) and 2-propenoic acid, sodium salt, tert-bu hydroperoxide- and hydrogen peroxide-initiated.
P–11–0105	12/10/10	03/09/11	CBI	(G) Scale inhibitor for subterranean oilfield brines.	(G) Organicsulfonic acid, sodium salt, polymer with 1-methyl hydrogen (2z)-2-butenedioate, 2-methyl-2-propenoic acid, 1,2-propanedoil mono(2-methyl-2-propenoate) and 2-propenoic acid, ammonium salt, tert-bu hydroperoxide- and hydrogen peroxide-initiated.
P–11–0106	12/13/10	03/12/11	CBI	(S) Surfactant in asphalt emulsion.	(G) Unsaturated fatty acids, amides with polyethylenepolyamine.
P–11–0107	12/13/10	03/12/11	CBI	(S) Anti-stripping agent in asphalt.	(G) Fatty acids, amides with triethylenetetramine.
P–11–0108	12/13/10	03/12/11	Cytec Industries Inc..	(S) Dispersing additive for organic and inorganic pigments and extenders.	(G) Substituted alkanoic acid, polymer with alkanoic acid alkyl esters, with substituted polyglycol-initiated.
P–11–0109	12/13/10	03/12/11	Cytec Industries Inc..	(G) Coatings resin	(G) Substituted alkyl homopolymer, substituted alkylacrylate and heteromonocyclic homopolymer monoester with substituted alkylacrylate.
P–11–0110	12/13/10	03/12/11	CBI	(G) Inhibitor for oil field applications.	(G) Tertiary ammonium compound.
P–11–0111	12/03/10	03/02/11	CBI	(G) Urethane component	(G) Alkoxylated triol polymer with alkyl anhydride.
P–11–0112	12/14/10	03/13/11	Cytec Industries Inc..	(G) Binder resin	(G) Modified epoxy resin.
P–11–0113	12/14/10	03/13/11	CBI	(G) Ink additive used to assure the ink binds to the print media.	(G) Heteromonocyclo, 4-methyl-, oxide, methanesulfonate salt.
P–11–0114	12/16/10	03/15/11	Mane, U.S.A.	(G) Perfumery ingredient	(S) 2(3h)-furanone, 3-ethyldihydro-5,5-dimethyl-.
P–11–0115	12/16/10	03/15/11	CBI	(G) Adhesive	(G) MDI modified polyester resin.
P–11–0116	12/16/10	03/15/11	CBI	(G) Inkjet ink	(G) Carboxylic acid, alkanoate polymer with ethenylbenzene and 2-propenoic acid, di-me 2,2′-(1,2-diazenediyl)bis[2-methylpropanoate]-initiatied, compds. with 2-(dimethylamino)ethanol.
P–11–0117	12/16/10	03/15/11	CBI	(G) Dispersant	(G) Polyamine-polymer graft polymer.
P–11–0118	12/16/10	03/15/11	CBI	(G) Component of fragrance mixture for highly dispersive applications.	(G) Methyl alkene ester of benzoic acid.
P–11–0119	12/16/10	03/15/11	Dow Chemical Company.	(G) Component of adhesive	(S) Oxirane, 2,2′-(phenylene)bis-.

TABLE I—99 PMNS RECEIVED FROM DECEMBER 3, 2010 TO JANUARY 31, 2010—Continued

Case No.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P–11–0120	12/16/10	03/15/11	Dow Chemical Company.	(G) Component of adhesive	(S) Oxirane, 2-(ethylphenyl).
P–11–0121	12/17/10	03/16/11	CBI	(G) Open, non-dispersive use.	(G) Epoxidized acrylic polymer.
P–11–0122	12/20/10	03/19/11	CBI	(G) Additive, open, non-dispersive use.	(G) Polyalkylene glycol methyl-2-propenoate, polymer with alkyl-substituted 2-propenoate.
P–11–0123	12/20/10	03/19/11	CBI	(G) Additive, open, non-dispersive use.	(G) Hydroxyalkyl methacrylate, reaction product with cyclic ether and cyclic carbonic acid anhydride.
P–11–0124	12/20/10	03/19/11	CBI	(G) Additive, open, non-dispersive use.	(G) Polyether urethane block copolymer.
P–11–0125	12/20/10	03/19/11	CBI	(G) Plastics additive	(G) Carbocyclic diesters.
P–11–0126	12/20/10	03/19/11	AOC LLC	(S) Polymer component for laminating of fiber reinforced plastic composites.	(S) 1,3-benzenedicarboxylic acid, polymers with by-products from manuf. of 1,4-cyclohexanedimethanol-di-me terephthalate-2,2,4,4-tetramethyl-1,3-cyclobutanediol polymer-ethylene glycol reaction products, 1,4-cyclohexanedimethanol, diethylene glycol, ethylene glycol, maleic anhyride and triethylene glycol.
P–11–0127	12/08/10	03/07/11	CBI	(G) Polymer for industrial coatings.	(G) Epoxidized fatty acids, unsatd, me esters, polymers with trimethylolpropane.
P–11–0128	12/21/10	03/20/11	Eastman Kodak Company.	(G) Contained use in an article. Export.	(S) 3h-indolium, 2-[2-[3-[2-(1,3-dihydro-1,3,3-trimethyl-2h-indol-2-ylidene)ethylidene]-2-[(1-phenyl-1h-tetrazol-5-yl)thio]-1-cyclohexen-1-yl]ethenyl]-1,3,3-trimethyl-, chloride (1:1).
P–11–0129	12/22/10	03/21/11	CBI	(G) Additive, open, non-dispersive use.	(G) Potassium polyallylpolyether maleate.
P–11–0130	12/22/10	03/21/11	Eastman Kodak Company.	(S) Starting material	(S) 1-butanol, 4-amino-.
P–11–0131	12/23/10	03/22/11	CBI	(G) Urethane adhesive	(G) Isocyanate-terminated prepolymer.
P–11–0132	12/23/10	03/22/11	CBI	(G) Additive, open, non-dispersive use.	(G) Polyether urethane.
P–11–0133	12/23/10	03/22/11	CBI	(G) Engine oil additive	(G) Alkyl alkenoate, polymer with alkyl alkenoate, alkyl alkenoate, alkyl alkenoates, (dialkylamino)alkyl alkenoate and heteromonocyclic alkyl alkenoate.
P–11–0134	12/23/10	03/22/11	CBI	(G) Gear oil additive	(G) Carbomonocyclic alkene polymer with alkyl alkenoate, alkyl alkenoate, alkyl alkenoate, alkyl alkenoate, polyalkylidiene alkenoate and heteromonocyclic alkene.
P–11–0135	12/23/10	03/22/11	CBI	(G) Cleaning enhancer additive for laundry and auto dish-washing products.	(G) Acid ester.
P–11–0136	12/29/10	03/28/11	CBI	(G) Flexible packaging adhesive.	(G) Polyether polyester polyurethane adhesive.
P–11–0137	12/29/10	03/28/11	CBI	(G) Component of polyurethane foam.	(G) Formaldehyde, reaction product with alkylphenol and dialkanolamine, alkoxy alkylated.
P–11–0138	12/29/10	03/28/11	CBI	(S) Component of rigid polyurethane foam insulation.	(G) Propylene oxide adduct of polyhydric alcohol.
P–11–0139	12/29/10	03/28/11	AGC Chemicals Americas, Inc.	(S) Component of rigid polyurethane insulation.	(G) Alkylene oxide adduct with glycerin.
P–11–0140	12/29/10	03/28/11	CBI	(G) Catalyst intermediate	(G) Metal alkoxide.
P–11–0141	12/30/10	03/29/11	CBI	(G) Colourant dispersant	(G) Acrylic polymer.
P–11–0142	12/30/10	03/29/11	CBI	(G) Colourant dispersant	(G) Acrylic polymer.
P–11–0143	12/30/10	03/29/11	CBI	(G) Colourant dispersant	(G) Acrylic polymer.
P–11–0144	01/03/11	04/02/11	CBI	(G) Colourant dispersant	(G) Acrylic polymer.
P–11–0145	01/03/11	04/02/11	CBI	(G) Colourant dispersant	(G) Acrylic polymer.
P–11–0146	01/03/11	04/02/11	CBI	(S) Coating for metals	(G) Styrene-acrylic copolymer.
P–11–0147	01/03/11	04/02/11	CBI	(S) Ultra-violet (Uv)-curable polymer for kitchen cabinet and office furniture finishes.	(G) Uv-curablepolyester polyurethane acrylate.

TABLE I—99 PMNS RECEIVED FROM DECEMBER 3, 2010 TO JANUARY 31, 2010—Continued

Case No.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P–11–0148	01/03/11	04/02/11	Ineos Oligomers.	(G) Industrial applications	(S) Hydrocarbons, C_4, 1,3-butadiene-free, polymd., triisobutylene fraction, hydrogenated.
P–11–0149	01/04/11	04/03/11	Forbo Adhesives, LLC.	(G) Hot melt adhesive	(G) Isocyanate function polyester urethane polymer.
P–11–0150	01/04/11	04/03/11	CBI	(G) Battery materials	(G) Alkali transition metal oxide.
P–11–0151	01/04/11	04/03/11	CBI	(G) Polymer admixture for cements.	(G) N-sulfoalkyl-aminocarbonylalkenyl, polymer modified with N,N-dialkyl-aminocarbonylalkenyl, sodium salt.
P–11–0152	01/07/11	04/06/11	CBI	(G) Resin (open, non dispersive use).	(G) Polyester type polyurethane resin.
P–11–0153	01/10/11	04/09/11	Steward Advanced Materials.	(S) Adsorbent for treating industrial wastewater; adsorbent for removing catalysts in pharmaceutical production; adsorbent for removing precious metals in mining operations; adsorbent for removing contaminants from water in remediation situations.	(S) 1-propanethiol, 3-(trimethoxysilyl)-, reaction products with silica.
P–11–0154	01/10/11	04/09/11	Huntsman Textile Effects.	(S) Exhaust dyeing of polyester fabrics.	(G) Dioxy difuran phenyl ethoxy ester compound.
P–11–0155	12/02/10	03/01/11	CBI	(G) Colorant for cleaners and detergents.	(G) Polymer substituted anthraquinone derivative.
P–11–0156	01/10/11	04/09/11	Nanotech Industries, Inc.	(S) Flooring; paints; top coating.	(S) Carbamic acid, N,N′-(trimethyl-1,6-hexanediyl)bis-, ester with 1,2-propanediol (1:2).
P–11–0157	01/10/11	04/09/11	Gellner Industrial, LLC.	(S) Acrylic polymer for concrete coatings, stain blocking sealer.	(S) 2-propenoic acid, 2-methyl-, 2-(dimethylamino)ethyl ester, polymer with ethyl 2-propenoate, 2-hydroxyethyl 2-propenoate and methyl 2-methyl-2-propenoate (9cl).
P–11–0158	01/11/11	04/10/11	CBI	(G) Inhibitor for oil field applications.	(G) Tertiary ammonium compound.
P–11–0159	01/11/11	04/10/11	Apollo Chemical.	(S) Flame retardant for synthetic and cellulosic fabrics.	(S) Guanidine phosphate.
P–11–0160	01/12/11	04/11/11	CBI	(G) Open, non-dispersive (resin).	(G) Acrylated fatty acid glycerides.
P–11–0161	01/12/11	04/11/11	CBI	(G) Open, non dispersive coating.	(G) Polyurethane acrylate resin.
P–11–0162	01/13/11	04/12/11	Esstech, Inc ..	(S) Adhesive monomer	(S) 5-isobenzofurancarboxylic acid, 1,3-dihydro-1,3-dioxo-,2-[(2-methyl-1-oxo-2-propen-1-yl)oxy]ethyl ester.
P–11–0163	01/18/11	04/17/11	CBI	(G) Open, non-dispersive use.	(G) Epoxidized acrylic polymer.
P–11–0164	01/19/11	04/18/11	CBI	(G) Rheology control agent	(G) 2-propenoic acid, 2-methyl-, aminoalkyl ester, polymer with et acrylate, 2-hydroxyethyl methacrylate, polyethylene glycol methacrylate alkyl ether and polyethylene-polypropylene glycol alkyl ether.
P–11–0165	01/20/11	04/19/11	CBI	(G) Automotive coatings	(G) Isocyanate homopolymer, alkoxysilyl amine blocked.
P–11–0166	01/20/11	04/19/11	CBI	(G) Surfactant	(G) Fatty acids, esters with polyalkylene glycol mono alkyl ether.
P–11–0167	01/21/11	04/20/11	CBI	(G) Polyurethane component.	(G) Aromatic isocyanate polymer with alkyldioic acid, polyol, and unsaturated alkyl acid.
P–11–0168	01/24/11	04/23/11	CBI	(S) Reinforcing filler for the production of rubber goods.	(G) Silanized amorphous silica.
P–11–0169	01/20/11	04/19/11	CBI	(G) Uv absorber for coatings	(G) Alkyl aryl substituted pyrrolo benzotriazole dione.

TABLE I—99 PMNS RECEIVED FROM DECEMBER 3, 2010 TO JANUARY 31, 2010—Continued

Case No.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P–11–0170	01/21/11	04/20/11	CBI	(S) Reactive dilluent and toughening agent for polyester and vinyl composites made via molding; auto, marine, windmill and other structural composite repair putty.	(G) Methacrylated lauric acid; methacrylate fatty acid; mlau.
P–11–0171	01/21/11	04/20/11	CBI	(S) Reactive dilluent and toughening agent for polyester and vinyl composites made via molding; auto, marine, windmill and other structural composite repair putty.	(G) Methacrylated caprylic acid; methacrylate fatty acid; mcap.
P–11–0172	01/21/11	04/20/11	CBI	(S) Reactive dilluent and toughening agent for polyester and vinyl composites made via molding; auto, marine, windmill and other structural composite repair putty.	(G) Methacrylated C_{8-18} fatty acids; methacrylate fatty acids; mc818.
P–11–0173	01/26/11	04/25/11	CBI	(G) Coatings for wooden floors.	(G) Polyurethane dispersion in water.
P–11–0174	01/26/11	04/25/11	CBI	(G) Coatings for textile	(G) Polyurethane dispersion in water.
P–11–0175	01/25/11	04/24/11	CBI	(G) Flow improver	(G) Polyglycerol fatty acid ester.
P–11–0176	01/26/11	04/25/11	CBI	(G) Coatings for wooden floors.	(G) Polyurethane dispersion in water.
P–11–0177	01/26/11	04/25/11	CBI	(G) Coatings for paper	(G) Polyurethane dispersion in water.
P–11–0178	01/26/11	04/25/11	CBI	(G) Cross-linker for industrial coating application.	(G) Blocked isocyanate in organic solvent.
P–11–0179	01/26/11	04/25/11	CBI	(G) Crosslinking product for use in industrial coatings.	(G) Water dispersed blocked isocyanate.
P–11–0180	01/28/11	04/27/11	CBI	(G) Modifier for polymers	(S) Phosphonic acid, p-octyl-, zinc salt (1:1).
P–11–0181	01/31/11	04/30/11	Raindance Technologies, Inc..	(G) Surfactant for laboratory use fluid.	(G) Fluorosurfactant.
P–11–0182	01/31/11	04/30/11	CBI	(G) Component of a one part heat cured, high structural, impact modified adhesive for metal assembly.	(S) Poly(oxy-1,4-butanediyl), .alpha.-hydroxy-.omega.-hydroxy-, polymers with hydroxy-terminated polybutadiene and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, 4-methoxyphenol-blocked.
P–11–0183	01/27/11	04/26/11	CBI	(G) Automotive coatings	(G) Acid alkyl monoester, heterocyclic compd.; acid alkyl diester, heterocyclic compd.; acid alkyl monoester, heterocyclic compound; acid alkyl diester, heterocyclic compound.
P–11–0184	01/27/11	04/26/11	CBI	(G) Automotive coatings	(G) Acid alkyl monoester, compd. with alkyl amine; acid alkyl diester, compd. with alkyl amine; acid alkyl monoester, compd. with alkyl amine; acid alkyl diester, compd. with alkyl amine.
P–11–0185	01/31/11	04/30/11	CBI	(G) Hydrocarbon feed stock for fuel..	(G) Oil derived from the pyrolysis of rubber tire shreds.
P–11–0186	01/31/11	04/30/11	CBI	(G) Provide multifunctional performance attributes to reinforcements used in composites.	(G) Infused carbon nanostructures (CNS).
P–11–0187	01/31/11	04/30/11	CBI	(G) Provide multifunctional performance attributes to reinforcements used in composites.	(G) Infused carbon nanostructures (CNS).
P–11–0188	01/31/11	04/30/11	CBI	(G) Provide multifunctional performance attributes to reinforcements used in composites.	(G) Infused carbon nanostructures (CNS).

TABLE I—99 PMNS RECEIVED FROM DECEMBER 3, 2010 TO JANUARY 31, 2010—Continued

Case No.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P–11–0189	01/13/11	04/12/11	Evans Chemetics LP.	(G) Coating applied to metal substrates.	(S) Acetic acid, 2,2′-dithiobis-′ diammonium salt.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE II—77 NOCS RECEIVED FROM DECEMBER 3, 2010 TO JANUARY 31, 2011

Case No.	Received date	Commencement notice end date	Chemical
P–09–0554	11/18/10	10/24/10	(S) Fuels, diesel, C_{9-18}-alkane branched and linear.
P–09–0565	11/24/10	11/15/10	(G) Hydrophobically modified cationic polyamide resin.
P–09–0574	11/10/10	10/11/10	(G) Acrylic based copolymer.
P–09–0589	10/13/10	10/06/10	(G) Oximosilane.
P–09–0590	12/02/10	10/06/10	(G) Oximosilane.
P–09–0632	12/07/10	12/02/10	(G) Polyphosphonate.
P–09–0633	12/07/10	11/22/10	(G) Isocyanate functional polyester urethane polymer.
P–10–0005	12/30/10	12/01/10	(S) Single-wall carbon nanotube.
P–10–0008	12/01/10	11/15/10	(G) Distillates (petroleum), light thermal cracked, reaction products with phenol, carboxylated, metal salts.
P–10–0024	11/30/10	05/10/10	(G) Substituted benzoyl chloride.
P–10–0026	11/30/10	05/15/10	(G) Salt of condensation product of substituted pyrazolone.
P–10–0060	10/28/10	10/17/10	(G) Partially fluorinated alcohol substituted glycol.
P–10–0096	12/22/10	11/17/10	(G) Aminated epoxy salts.
P–10–0097	12/22/10	11/19/10	(G) Aminated epoxy salt.
P–10–0099	12/07/10	11/24/10	(S) Phosphonic acid, p-octyl-, lanthanum (3+) salt (2:1)*.
P–10–0105	11/22/10	10/12/10	(S) 1,2-cyclohexane dicarboxylic acid bis (2-ethylhexyl) ester*.
P–10–0127	12/22/10	11/23/10	(G) Blocked isocyanate crosslinker.
P–10–0136	12/01/10	11/10/10	(G) Polythiol.
P–10–0148	11/16/10	10/22/10	(G) Partially fluorinated borate ester.
P–10–0168	11/04/10	10/22/10	(G) Polyester polyurethane.
P–10–0173	11/10/10	11/09/10	(G) Vinylimidazole (vima) grafted poly alpha olefin (pao) complexed with diisopropoxy titanium bis-acetylacetonate.
P–10–0215	10/14/10	09/21/10	(G) Silane modified polymer.
P–10–0224	12/29/10	12/11/10	(G) 4,4′-bipridinium, 1-(phosphonoalkyl)-1′-substituted-, salt with anion (1:2).
P–10–0225	10/25/10	10/06/10	(G) Aromatic isocyanate prepolymer.
P–10–0249	01/18/11	12/28/10	(G) Methyl methacrylate butylmethylacrylate styrene divinylbenzene copolymer.
P–10–0282	01/31/11	01/12/11	(G) Maleated nylon graft copolymer.
P–10–0283	01/20/11	12/17/10	(G) Maleated nylon graft copolymer.
P–10–0294	11/29/10	11/20/10	(G) Unsaturated urethane acrylate.
P–10–0302	12/07/10	11/24/10	(G) Fatty acid amine salt.
P–10–0303	12/29/10	12/11/10	(G) Heterocycle, disubstituted, salt with anion (1:1).
P–10–0317	10/18/10	10/07/10	(G) Fluoroalkyl acrylate copolymer.
P–10–0324	12/03/10	11/09/10	(G) Urea, N,N′-(methyl-1,3-phenylene)bis[N′,N′-bis[3-(polyalkyleneamino]-, compound with formaldehyde polymer with phenol.
P–10–0325	10/07/10	09/20/10	(G) Neodymium ziegler-natta catalyst.
P–10–0329	11/24/10	11/11/10	(S) Hexadecanamide, N-[3-(hexadecyloxy)-2-hydroxypropyl]-N-(2-hydroxyethyl)-*.
P–10–0332	12/09/10	11/09/10	(G) Amino alcohol substituted phenol.
P–10–0335	10/15/10	10/05/10	(G) Polyester type urethane resin.
P–10–0355	12/29/10	12/15/10	(S) Cyclohexanecarboxylic acid, 3-methyl-, methyl ester, (1R, 3R)-rel-*.
P–10–0359	12/15/10	11/18/10	(G) Heterocyclic salt.
P–10–0371	10/21/10	10/03/10	(G) Alkoxysilane.
P–10–0373	11/09/10	11/04/10	(G) Adipic acid polyester.
P–10–0375	11/04/10	10/15/10	(G) Dimer fatty acid based polyester polyurethane.
P–10–0388	10/06/10	08/23/10	(G) 2-propenoic acid, 2-methyl-, polymer with alkyl 2-propenoates, ethenyl acetate and methyl-2-methyl-2-propenoate.
P–10–0389	10/04/10	09/08/10	(G) Amino acid, N-(2-aminoalkyl)-, salt (1:1), polymers with cycloaliphatic diamine, alkyldiisocyanate, alpha-hydro-omega-hydroxy(alkyldiyl) and polyalkyl glycol mono alkyl ether blocked, alkyldiisocyanate-aromatic diisocyanate, polyalkyl glycol mono alkyl ether blocked.
P–10–0394	10/07/10	09/28/10	(G) Aromatic carboxylic acid.
P–10–0395	10/07/10	10/01/10	(G) Organic carboxylic acid.
P–10–0396	10/25/10	10/03/10	(G) Heteroaromatic compound.
P–10–0397	10/25/10	10/21/10	(G) Organic antioxidant.
P–10–0409	12/03/10	11/11/10	(G) Haloalkyl substituted pyridine sulfide.

TABLE II—77 NOCS RECEIVED FROM DECEMBER 3, 2010 TO JANUARY 31, 2011—Continued

Case No.	Received date	Commencement notice end date	Chemical
P–10–0412	10/14/10	09/17/10	(G) Acrylic polymer.
P–10–0418	01/14/11	12/15/10	(G) Aromatic dicarboxylic acid, polymer with cycloaliphatic diamine, aliphatic diisocyanate, aliphatic dicarboxylic acid, aliphatic diol, polyether diol, and dihydroxy aliphatic carboxylic acid compound compound with aliphatic triamine.
P–10–0430	10/06/10	09/28/10	(G) Urethane acrylate.
P–10–0431	10/28/10	10/08/10	(G) Soybean oil polyol.
P–10–0432	12/14/10	12/13/10	(G) Acrylated aliphatic polyurethane.
P–10–0434	01/05/11	12/09/10	(G) Polyurethane dispersion.
P–10–0436	12/13/10	11/02/10	(G) Unsaturated polyester resin.
P–10–0443	10/28/10	10/22/10	(G) Carbomonocyclic dicarboxylic acid, polymer with 1,2-ethanediol, 2-ethyl-2-(hydrooxymethyl)-1,3-propane derivatives, 4,4'-(1-methylethylidene)bis[cyclohexanol] and 1,2,3-propanetriol.
P–10–0446	11/03/10	10/29/10	(S) Terpenes and terpenoids, mint, metha arvensis-oil, acetylated*.
P–10–0448	11/16/10	10/26/10	(S) 1,4-benzenedicarboxylic acid, 1,4-dimethyl ester, polymer with 1,4-cyclohexanedimethanol and 2,2,4,4-tetramethyl-1,3-cyclobutanediol, manuf. of, by-products from, reaction products with ethylene glycol*.
P–10–0461	01/07/11	12/28/10	(G) Polyalkylene carbonatediol.
P–10–0473	12/23/10	11/29/10	(G) Polycarbonate and polyester-type polyurethane.
P–10–0477	12/01/10	11/03/10	(G) Inorganic carbonate reaction products with substituted alkyl ether.
P–10–0488	11/17/10	11/10/10	(G) Poly(urethane urea).
P–10–0490	11/18/10	11/07/10	(G) Dimer fatty acid, polymer with tall-oil fatty acid, alkyl diacid and alkyldiamines.
P–10–0491	01/06/11	12/15/10	(G) Amphoteric acrylic polymer.
P–10–0493	12/23/10	11/12/10	(G) Bisphenol A epoxy hema phthalate.
P–10–0498	01/05/11	12/06/10	(S) Dodecanoic acid, 3-[[3-[[[2,2-dimethyl-3-[(1-oxododecyl)oxy]propylidene]amino]methyl]-3,5,5-trimethylcyclohexyl]imino]-2,2-dimethylpropyl ester*.
P–10–0516	01/28/11	01/21/11	(G) Alkanoic acid ester, polymers with alkanolamine and substituted acrylate-blocked substituted polyalkylene-urethane polymer.
P–10–0522	01/19/11	01/15/11	(G) Polymer with aromatic polycarboxylic acid, aliphatic polycarboxylic acid and aliphatic polyol.
P–10–0526	01/14/11	01/13/11	(G) Methacrylate co-polymer.
P–10–0528	01/18/11	01/12/11	(G) Urethane acrylate.
P–10–0586	01/31/11	01/05/11	(G) Isocyanate terminated urethane polymer.
P–10–0587	01/31/11	01/06/11	(G) Isocyanate terminated urethane polymer.
P–10–0590	01/20/11	01/17/11	(G) Modified ketal ester.
P–11–0015	01/27/11	01/26/11	(S) Cyclohexanepentanol, -methyl-*.
P–98–0687	11/15/10	10/14/10	(G) Polyolefin phenol ethoxylate.
P–99–1008	10/12/10	09/15/10	(G) Polyimide precursor solution.

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: May 23, 2011.

Matthew Leopard,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2011–13672 Filed 6–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2011–0313; FRL–8874–1]

Certain New Chemicals; Receipt and Status Information; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of April 15, 2011, concerning certain new chemicals, receipt and status information, premanufacture notices. This document is being issued to correct typographical errors.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Bernice Mudd, Information Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–8951; *e-mail address: mudd.bernice@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; *telephone number:* (202) 554–1404; *e-mail address: TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2011–0313. All documents in the docket are listed

in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. What does this correction do?

In the preamble for FR Doc. 2011–8574 published in the **Federal Register** of April 15, 2011 (76 FR 21339) (FRL–8869–4), the premanufacture notices P–11–0022 through P–11–0026 inadvertently contained incorrect chemicals which are corrected as follows:

On page 21340, under Table I. the entries for P–11–0022, P–11–0023, and P–11–0024 and on page 21341, P–11–0025 and P–11–0026 are corrected to read:

Case No.	Received date	Projected Notice end date	Manufacturer/importer	Use	Chemical
P–11–0022	10/12/10	01/09/11	Akzo Nobel Coatings Inc.	(S) Designated use of this polymer is for refinishing vehicles. through the hydroxyl groups on the polymer, the coating is crosslinked with a polyisocyanate..	(S) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, polymer with rel-(1r,2r,4r)-1,7,7-trimethylbicyclo[2.2.1]hept-2-yl 2-methyl-2-propenoate and rel-(1r,2r,4r)—1,7,7-trimethylbicyclo[2.2.1]hept-2-yl 2-propenoate*.
P–11–0023	10/13/10	01/10/11	Omnova Solutions Inc.	(S) Intermediate in the production of functionalized polymers; surfactant, flow, leveling, and wetting additive for solvent borne coatings.	(S) Boron, trifluoro(tetrahydrofuran)-, (t-4)-, polymer with 3-methyl-3-[(2,2,2-trifluoroethoxy)methyl]oxetane, ether with 2,2-dimethyl-1,3-propanediol (2:1)*.
P–11–0024	10/13/10	01/10/11	Omnova Solutions Inc.	(S) Intermediate in the production of functionalized polymers; surfactant, flow, leveling, and wetting additive for solvent borne coatings.	(S) Boron, trifluoro(tetrahydrofuran)-, (t-4)-, polymer with 3-methyl-3-[(2,2,3,3,3-pentafluoropropoxy)methyl]oxtane, ether with 2,2-dimethyl-1,3-propanediol (2:1)*.
P–11–0025	10/13/10	01/10/11	Omnova Solutions Inc.	(S) Intermediate in the production of functionalized polymers; surfactant, flow, leveling, and wetting agent borne coatings.	(S) Boron, trifluoro(tetrahydrofuran)-, (t-4)-, polymer with 3-methyl-3-[(2,2,3,3,3-pentafluoropropoxy)methyl]oxetane, mono(2,2,2-trifluoroethyl) ether*.
P–11–0026	10/13/10	01/10/11	Omnova Solutions Inc.	(S) Intermediate in the production of functionalized polymers; surfactant, flow, leveling, and wetting agent borne coatings.	(S) Boron, trifluoro(tetrahydrofuran)-, (t-4)-, polymer with 3-methyl-3-[(3,3,4,4,5,5,6,6,6-nonafluorohexl-y)oxy]methyl]oxetane, ether with 2,2-dimethyl-1,3-propanediol(2:1)*.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: May 23, 2011.

Matthew Leopard,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2011–13673 Filed 6–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8997–3]

Environmental Impact 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 05/23/2011 Through 05/27/2011 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 website 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. 20110167, Revised Final EIS, USFS, MT, Bozeman Municipal Watershed Project, New Information to Address New Additions to the Sensitive Species List, To Implement Fuel Reduction Activities, Bozeman Ranger District, Gallatin National Forest, City of Bozeman Municipal Watershed, Gallatin County, MT, Review Period Ends: 07/18/2011, Contact: Teri Seth 406–522–2520.

EIS No. 20110168, Draft Supplement, USFS, ID, Bussel 484 Project Area, Updated and New Information, Manage the Project Area to Achieve Desired Future Conditions for Vegetation, Fire, Fuels, Recreation, Access, Wildlife, Fisheries, Soil and Water, Idaho Panhandle National Forest, St. Joe Ranger District, Shoshone County, ID, Comment Period Ends: 07/18/2011, Contact: Lynette Myhre 208–245–1531.

EIS No. 20110169, Draft EIS, BLM, UT, Sigurd to Red Butte No. 2–345Kv Transmission Project, Construct, Operate, and Maintain a Single—Circuit 345 Kv Transmission Line, Issue of Right-of-Way Grant by BLM and Special-Use-Permit by AFS, Sevier and Washington Counties, UT, Comment Period Ends: 07/18/2011, Contact: Tamara Gertsch 307–775–61115.

EIS No. 20110170, Draft EIS, USACE, FL, St Lucie County South Beach and Dune Restoration Project, To Restore Recreational Beach, Restore Beach and Habitat, and Reduce Storm Damage Due to Beach Erosion, St. Lucie County, FL, Comment Period Ends: 07/18/2011, Contact: Garett Lips 561–472–3519.

EIS No. 20110171, Draft EIS, USFS, ID, Lower Orogrande Project, Proposes Watershed Improvement Timber Harvest and Wildlife Habitat Enhancement Activities, North Fork Ranger District, Clearwater National Forest, Clearwater County, ID, Comment Period Ends: 07/18/2011, Contact: George Harbaugh 208–935–4260.

EIS No. 20110172, Final EIS, USFS, CA, Mudflow Vegetation Management Project, To Improve or Sustain the Health and Resiliency of the Forest and Reduce the Risk of Stand-replacing Wildfire, Siskiyou County, CA, Review Period Ends: 07/05/2011, Contact: Christine Jordan 530–964–3771.

EIS No. 20110173, Final EIS, GSA, CA, Calexico West Land Port of Entry in Calexico, Expansion of Reconfiguration, Implementation, CA, Review Period Ends: 07/05/2011, Contact: Maureen Sheehan 253–931–7548.

EIS No. 20110174, Draft EIS, USFS, 00, George Washington National Forest Land and Resource Management Project, Implementation, Alleghany, Amherst, Augusta, Bath, Botetourt, Frederick, Highland, Nelson, Page, Rockbridge, Rockingham, Shenandoah, and Warren Counties VA and Hampshire, Hardy, Monroe, and Pendleton Counties, WV, Comment Period Ends: 09/01/2011, Contact: Karen Overcash 540–265–5175.

EIS No. 20110175, Final EIS, WAPA, SD, Groton Generation Station (GGS) Project, Proposes to Modify its Interconnection Agreement, Basin Electric Power Cooperative, for the (GGS) to Eliminate 50-Megawatts (MW) Annual Average Operating Limit, Brown County, SD, Review Period Ends: 07/05/2011, Contact: Erika Walters 720–962–7279.

Amended Notices

EIS No. 20110106, Draft EIS, BIA, NM, Pueblo of Jemez 70.277 Acre Fee-To-Trust Transfer and Casino Project, Implementation, Dona Ana County, NM, Comment Period Ends: 07/01/2011, Contact: Priscilla Wade 505–563–3417. Revision to FR Notice Published 04/08/2011: Extending Comment Period from 06/01/2011 to 07/01/2011.

EIS No. 20110108, Draft EIS, USFS, OR, Kapka Butte Sno-Park Project, Proposal to Build a New Sno-Park to Provide more High-Elevation Parking for Winter Recreationist, Bend-Ft. Rock Ranger District, Deschutes National Forest, Deschutes County, OR, Comment Period Ends: 06/30/2011, Contact: Beth Peer 541–383–4769 Revision to Notice Published 04/15/2011: Extending Comment Period from 05/30/2011 to 06/30/2011.

EIS No. 20110121, Draft EIS, USA, CA, Presidio of Monterey Installation (POM) Project, To Implement the Real Property Master Plan, Monterey County, CA, Comment Period Ends: 06/21/2011, Contact: Michelle Royal 210–424–8331 Revision to FR Notice Published 04/22/2011: Extending Comment Period from 06/06/2011 to 06/21/2011.

Dated: May 31, 2011.

Aimee S. Hessert,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–13820 Filed 6–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9315–4]

Science Advisory Board Staff Office Notification of a Joint Public Meeting of the Chartered Science Advisory Board and Board of Scientific Counselors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a joint public meeting of the Chartered SAB and Board of Scientific Counselors (BOSC) to hold discussions with EPA regarding the Office of Research and Development's (ORD's) new strategic directions for research.

DATES: The public meeting will be held on Wednesday, June 29, 2011 from 8:30 a.m. to 5:30 p.m. and Thursday, June 30, 2011 from 9 a.m. to 4 p.m. (Eastern Daylight Time).

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 201 Harrison Oaks Boulevard, Cary, North Carolina 27513.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes further information concerning the meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 564–2218, fax (202) 202–565–2098; or e-mail at *nugent.angela@epa.gov*. General information concerning the SAB can be found on the EPA Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The BOSC was established by the EPA to provide advice, information, and recommendations regarding the ORD research program. The SAB and BOSC are Federal Advisory Committees chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the SAB and BOSC will hold a joint public meeting to hold discussions with EPA regarding

ORD's new strategic directions for research. The SAB and BOSC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The Office of Research and Development is restructuring its research programs for FY 2012 to better understand environmental problems and inform sustainable solutions to meet EPA's strategic goals. The restructured research program will be comprised of six program areas: Air, Climate, and Energy; Safe and Sustainable Water Resources; Sustainable and Healthy Communities; Chemical Safety for Sustainability; Human Health Risk Assessment; and Homeland Security.

The Office of Research and Development has requested SAB and BOSC advice at an early stage in the process of defining strategic program directions to help ORD develop research plans to respond to EPA's strategic goals and high priority needs.

Availability of Meeting Materials: A meeting agenda and other materials for the meeting will be placed on the SAB Web site at *http://epa.gov/sab*.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements*: To be placed on the public speaker list for the June 29–30, 2011 meeting, interested parties should notify Dr. Angela Nugent, DFO, by e-mail no later than June 22, 2011. Individuals making oral statements will be limited to five minutes per speaker. *Written Statements*: Written statements for the June 29–30, 2011 meeting should be received in the SAB Staff Office by June 22, 2011, so that the information may be made available to the SAB and BOSC for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide electronic versions of each document submitted with *and* without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Nugent at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: May 27, 2011.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–13823 Filed 6–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9315–6]

Science Advisory Board Staff Office Notification of a Public Teleconference of the Clean Air Scientific Advisory Committee (CASAC) Ozone 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 teleconference on July 6, 2011 of the Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel to discuss its draft review of EPA's *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (March 2011 Draft).*

DATES: The CASAC Ozone Review Panel teleconference will be held on Wednesday, July 6, 2011 from 10 a.m. to 1 p.m. (Eastern Time).

ADDRESSES: The public teleconference will take place by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the July 6, 2011 public 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 20004; via telephone/voice mail (202) 546–2073; 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: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463 5 U.S.C., App. 2, notice is hereby given that the CASAC Ozone NAAQS Review Panel will hold a public teleconference to discuss its draft letter reviewing EPA's first external review draft of the *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (March 2011*) (*http://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=217463*).

The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. 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 Ozone.

The Ozone Review Panel developed its draft report after holding a face-to-face meeting on May 19–20, 2011 (as noticed in 76 FR 23809–23810) to review EPA's draft *Integrated Science Assessment.* Information about this review activity may be found on the CASAC Web site at *http://www.epa.gov/casac/.*

Technical Contacts: Any technical questions concerning the *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (March 2011*) may be directed to Dr. James Brown (*brown.james@epa.gov*).

Availability of Meeting Materials: Prior to the meeting, the draft letter, agenda, public comments and other materials will be accessible through the calendar link on the blue navigation bar 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 the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* To be placed on the public speaker list for the teleconference, interested parties should

notify Dr. Stallworth, DFO, by e-mail no later than July 1, 2011. Individuals making oral statements will be limited to three minutes per speaker. *Written Statements:* Written statements for the meeting should be received in the SAB Staff Office by July 1, 2011 so that the information may be made available to the Panel for its consideration prior to this meeting. 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 general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC Web site. Copyrighted materials 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: May 26, 2011.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–13843 Filed 6–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –9314–7]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to Montgomery Township, NJ

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to Montgomery Township, New Jersey (the Township), for the purchase of specific foreign manufactured immersed hollow fiber ultrafiltration membrane cassettes, ZeeWeed® 500D, which are the effluent filtration component of the Membrane Bioreactor (MBR) for the Skillman Village Wastewater Treatment Plant (WWTP) upgrade project. The ZeeWeed® 500D immersed ultrafiltration membrane cassettes are manufactured outside of the United States by GE Water & Processes Technologies (GEW&PT), in Oroszlany, Hungary. The design and specifications of the Township's proposed Skillman Village WWTP upgrade project were based on the recommendations provided by an engineering study and pilot testing conducted in 2005, which concluded that the WWTP facility be upgraded with a MBR process.

This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project specific circumstances. Based upon information submitted by the Township and its consulting engineer, EPA has concluded that there are currently no domestic manufactured submerged hollow fiber ultrafiltration MBR membranes available in sufficient and reasonable quantity and of a satisfactory quality to meet the Township's project design and performance specifications and that a waiver is justified. The Regional Administrator is making this determination based on the review and recommendations of the State Revolving Fund Program Team. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605(a) of ARRA. This action permits the purchase of foreign manufactured submerged hollow fiber ultrafiltration membrane cassettes by the Township, as specified in its January 18, 2011 waiver request and February 4, 2011 supplemental submittal to EPA.

DATES: *Effective Date:* June 3, 2011.

FOR FURTHER INFORMATION CONTACT: Alicia Reinmund-Martínez, Environmental Engineer, (212) 637–3827, State Revolving Fund Program Team, Division of Environmental Planning and Protection, U.S. EPA, 290 Broadway, New York, NY 10007.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Sections 1605(c) and 1605(b)(2), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the Township for the purchase of ZeeWeed® 500D immersed hollow fiber ultrafiltration membrane cassettes manufactured in Hungary by GEW&PT that meet the Township's design and performance specifications of its Skillman Village WWTP upgrade project. EPA has evaluated the Township's basis for the procurement of the foreign made immersed hollow fiber ultrafiltration membrane cassettes. Based upon information submitted by the Township and its consulting engineer, EPA has concluded that there are currently no domestic manufactured immersed hollow fiber ultrafiltration membrane cassettes available in sufficient and reasonable quantity and of a satisfactory quality to meet the Township's project design and performance specifications.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided under Section 1605(b) of ARRA if EPA determines that (1) Applying these requirements would be inconsistent with public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

EPA has determined that the Township's waiver request is timely even though the request was made after the construction contract was signed. Consistent with the direction of the Office of Management and Budget (OMB) regulations at 2 CFR 176.120, EPA has evaluated the Township's request to determine if the request, though made after the contract date, can be treated as if it were timely made. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date.

However, in this case, EPA has determined that the Township's request may be treated as timely because the need for a waiver was not foreseeable at

the time the contract was signed. The Township submitted this waiver request after the contract date because on June 22, 2009, GEW&PT had provided a Buy American compliance certification letter to the Township indicating that the MBR system would comply with ARRA Section 1605 pursuant to the "substantial transformation" test. At that time, the Township considered this rationale reasonable and anticipated full compliance with the Buy American provisions of ARRA. The Township did not determine the need for a waiver until on or about May 25, 2010, when GEW&PT notified the Township that the ZeeWeed® 500D immersed hollow fiber ultrafiltration membrane cassettes of its MBR system did not comply with the substantial transformation test and that the Township should seek a waiver from Buy American requirements based on no availability of domestic manufactured membrane cassettes that meet project specifications. Accordingly, EPA will evaluate the request as a timely request.

The Township's Skillman Village WWTP upgrade project includes the installation of a MBR system that will enable the WWTP's effluent quality to meet the new stringent effluent limitations stipulated in its New Jersey Pollutant Discharge Elimination System (NJPDES) wastewater discharge permit. The documentation provided by the Township indicates that with the exception of the actual ZeeWeed®500D membrane cassettes, GEW&PT will fabricate and assemble all of the MBR system components in its Minnetonka, Minnesota facility. The ZeeWeed® 500D immersed hollow fiber ultrafiltration membrane cassettes are manufactured in Hungary and will be shipped directly from the manufacturing facility in Hungary to the project site.

The Township is requesting a waiver for the purchase of ZeeWeed® 500D immersed hollow fiber ultrafiltration membrane cassettes because there are no submerged hollow fiber ultrafiltration MBR membranes manufactured in the United States that meet the design specifications for the project. Based on an engineering study and pilot testing conducted in 2005, the Township identified MBR technology as the most appropriate and best demonstrable technology for the Skillman Village WWTP upgrade project. During the design and bidding phase of the project, the Township evaluated multiple manufacturers of MBR systems, and fully anticipated, by way of manufacturer/supplier confirmation, that the specified GEW&PT membrane cassettes would be fully compliant with ARRA Buy American requirements.

Upon learning from GEW&PT on May 25, 2010, that the ZeeWeed® 500D membranes would not meet the substantial transformation test and therefore, is not in compliance with ARRA Buy American requirements, the Township repeated its efforts to find domestic manufactured ultrafiltration hollow fiber membranes that would meet the Skillman Village WWTP upgrade project specifications. The Township's research confirmed that no additional manufacturers of such membranes suitable for the WWTP project had entered the North American market since the design phase of the project The Township's research revealed that, the MBR market is dominated by four manufacturers of MBR systems, including General Electric (Zenon), Kubota, Siemens and Koch-Puron, and all four companies manufacture their cassettes abroad. Of these manufacturers, only General Electric and Siemens manufacture the specified immersed hollow fiber ultrafiltration membrane cassettes. Therefore, the Township concluded that there is no domestically available immersed hollow fiber ultrafiltration membrane cassette and that a waiver from Buy American requirements would be required. Based on the technical evaluation of the Township's waiver request and supporting documentation as well as the additional research conducted by EPA's national contractor, the Township's claim that there are no submerged hollow fiber ultrafiltration MBR membranes manufactured in the United States that meet the design specification is supported by the available evidence.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are already "shovel ready" by requiring entities, such as the Township, to revise their design standards and specifications and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and potentially the cancellation of this project as sited. The delay or cancellation of this construction would directly conflict with the fundamental economic purpose of ARRA, which is to create or retain jobs.

The April 28, 2009, EPA Headquarters Memorandum, "Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009'" (Memorandum), defines: *reasonably available quantity* as "the quantity of iron, steel, or the relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design," and *satisfactory quality* as "the quality of iron, steel, or the relevant manufactured good as specified in the project plans and designs."

The Region 2 State Revolving Fund Program Team has reviewed this waiver request and has determined that the supporting documentation provided by the Township establishes both a proper basis to specify the particular good required and that the manufactured good is not available from a producer in the United States to meet the design specifications for the proposed project. The information provided is sufficient to meet the criteria listed under Section 1605(b) of ARRA, OMB regulations at 2 CFR 176.60–176.170, and in the EPA Headquarters April 28, 2009 Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the Township's technical specifications, a waiver from the Buy American requirement is justified.

The Administrator's March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the Authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the Township is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of the ZeeWeed® 500D immersed hollow fiber ultrafiltration membrane cassettes, as specified in its January 18, 2011 waiver request and February 4, 2011 supplemental submittal to EPA. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers "based on a finding under subsection (b)."

Authority: Pub. L. 111–5, Section 1605.

Dated: April 25, 2011.

Judith A. Enck,

Regional Administrator, Environmental Protection Agency, Region 2.

[FR Doc. 2011–13829 Filed 6–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9315–9]

Proposed Settlement Agreement for Recovery of Past Response Costs Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act of 1986; in Re: Agawam Sportsman's Club Superfund Site, Located in Agawam, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601, *et. seq.,* notice is hereby given of a proposed administrative settlement for recovery of past response costs at the Agawam Sportsman's Club Superfund Site, in Agawam, Massachusetts. The settlement requires the settling party, Agwam Sportsman's Club, Inc. ("ASC") to sell the Site property for fair market value and distribute 90% of the net sale proceeds to the Environmental Protection Agency (the "Agency") for past response costs incurred at the Site. ASC would be required to distribute the remaining 10% of the net sale proceeds to the Town of Agawam as a result of property tax arrears. ASC has entered into a purchase and sale agreement to sell the Site property to a developer. The settlement includes a covenant not to sue the Settling Party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a).

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 5 Post Office Square, Boston, MA 02109–3912.

DATES: Comments must be submitted on or before July 5, 2011

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region I, 5 Post Office Square, Suite 100, Mailcode ORA 18–1, Boston, Massachusetts 02109–3912, and should refer to: In re: Agawam Sportsman's Club Superfund Site, U.S. EPA Docket No. CERCLA–01–2010–0008. .

FOR FURTHER INFORMATION CONTACT: A copy of the proposed Agreement can be obtained from Gregory Dain, U.S. Environmental Protection Agency, Region I, 5 Post Office Square, Suite 100, Mailcode OES 04–2, Boston, Massachusetts 02109–3912, (617) 918–1884.

Dated: May 18, 2011.

Art Johnson,

Acting Director, Office of Site Remediation and Restoration, Region I.

[FR Doc. 2011–13833 Filed 6–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[[FRL–9315–5]

Science Advisory Board Staff Office Request for Additional Nominations for the SAB Environmental Justice Technical Review Panel(s)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting public nominations of additional experts to review the Agency's proposed technical document(s) which consider environmental justice concerns.

DATES: Nominations should be submitted by June 24, 2011 per instructions below.

FOR FURTHER INFORMATION: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2057; by fax at (202) 565–2098 or via e-mail at *shallal.suhair@epa.gov*. General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The SAB published a **Federal Register** notice (Vol. 76, Number 30, Pages 8366–8367) on February 14, 2011 seeking nominations for a SAB panel to review the Agency's environmental justice technical documents. The SAB is now seeking to augment the list of potential candidates to include additional experts to review the Agency's environmental justice screening tool(s).

EPA is developing several tools to help identify communities of potential environmental justice (EJ) concern. These EJ screening tools use a variety of demographic and environmental variables, combined in different ways. EPA has requested that the SAB provide advice on establishing a method for weighting the environmental factors used in these tools.

Request for Nominations: The SAB Staff Office is seeking additional nominations of nationally and internationally recognized experts with experience in the following disciplines: risk assessment (particularly comparative risk and risk ranking); decision analysis; economics and environmental science, specifically in drinking water and groundwater human health effects, particulate matter, ozone and toxic air pollutants (including diesel particulate matter); lead in paint, household dust and other locations, proximity to active and inactive hazardous waste sites, industrial and other facilities; and proximity to highways. Additional experts will be considered along with those currently identified on the list of candidates (see *http://yosemite.epa.gov/sab/sabproduct.nsf/02ad90b136fc21ef85256eba00436459/0F7D1A0D7D15001B8525783000673AC3/$File/memo%20and%20bio-%20EJT.pdf*).

Availability of the Review Materials: The review materials will be made available on the SAB Web site. For questions concerning the review materials, please contact Bridgid Curry at (202) 565–2567, or *curry.bridgid@epa.gov*.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on this expert *ad hoc* Panel. Nominations

should be submitted in electronic format (which is preferred over hard copy) following the instructions for "Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed" *http://www.epa.gov/sab* provided on the SAB Web site. The instructions can be accessed through the "Nomination of Experts" link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab*. To receive full consideration, nominations should include all of the information requested.

EPA's SAB Staff Office Requests: contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Dr. Suhair Shallal, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than June 24, 2011. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the SAB Web site at *http://www.epa.gov/sab*. Public comments on this List of Candidates will be accepted for 21 calendar days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a balanced subcommittee or review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In the SAB EJT Panel, the SAB Staff Office will consider public comments on the List of candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for Panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; and (e) skills working in committees, subcommittees and advisory panels; and, for the Panel as a whole, (f) diversity of expertise and viewpoints.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110-48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address at *http://www.epa.gov/sab/pdf/epaform3110–48.pdf*.

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf*.

Dated: May 26, 2011.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–13828 Filed 6–2–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Systemic Resolution Advisory Committee; Notice of Meeting

Agency: Federal Deposit Insurance Corporation.

Action: Notice of Open Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given of a meeting of the FDIC Systemic Resolution Advisory Committee (the "SR Advisory Committee"), which will be held in Washington, DC. The SR Advisory Committee will provide advice and recommendations on a broad range of issues regarding the resolution of systemically important financial companies pursuant to Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 (July 21, 2010), 12 U.S.C. 5301 *et seq.* (the "Dodd-Frank Act").

DATES: Tuesday, June 21, 2011, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will include a discussion of a range of issues related to the resolution of systemically important financial companies pursuant to Title II of the Dodd-Frank Act. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available, on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the SR Advisory Committee before or after the meeting. This SR Advisory Committee meeting will be Webcast live via the Internet at *http://www.vodium.com/MediapodLibrary/index.asp?library=pn100472_fdic_SRAC*. This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html.* Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at: *http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash.* Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed Internet

connection is recommended. The SR Advisory Committee meeting videos are made available on-demand approximately two weeks after the event.

Dated: May 27, 2011.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2011–13736 Filed 6–2–11; 8:45 am]

BILLING CODE 6714–01–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 July 1, 2011.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Crescent Financial Bancshares, Inc.,* Cary, North Carolina; to merge with Crescent Financial Corporation, Cary, North Carolina, and thereby acquire control of Crescent State Bank, both of Cary, North Carolina.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Golden Oak Bancshares, Inc.,* Sparta, Wisconsin; to become a bank holding company by acquiring approximately 81.5 percent of the voting shares of Park Bank, Holmen, Wisconsin.

Board of Governors of the Federal Reserve System, May 31, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–13774 Filed 6–2–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Adjusted Federal Medical Assistance Percentage (FMAP) Rates for the Second and Third Quarters of Fiscal Year 2011 (FY11)

Implementation of Section 5001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) for adjustments to the second and third quarters of Fiscal Year 2011 Federal Medical Assistance Percentage Rates for Federal Matching Shares for Medicaid and Title IV–E Foster Care, Adoption Assistance and Guardianship Assistance programs.

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: This notice provides the adjusted Federal Medical Assistance Percentage (FMAP) rates for the second and third quarters of Fiscal Year 2011 (FY11) as required under Section 5001 of the American Recovery and Reinvestment Act of 2009 (ARRA). Section 5001 of the ARRA provides for temporary increases in the FMAP rates to provide fiscal relief to states and to protect and maintain state Medicaid and certain other assistance programs in a period of economic downturn. The increased FMAP rates apply during a recession adjustment period that was originally defined in ARRA as the period beginning October 1, 2008 and ending December 31, 2010. Public Law 111–226 amended ARRA to extend the recession adjustment period to June 30, 2011 and to extend the hold harmless provision that prevents a state's FMAP rate from decreasing due to a lower unemployment rate from the calendar quarter ending before July 1, 2010 to the calendar quarter ending before January 1, 2011. Public Law 111–226 also provided for a phase-down of the general FMAP increase in the last two quarters of the extended recession adjustment period, and changed the look back period for calculating the unemployment adjustment for those quarters.

DATES: *Effective Date:* The percentages listed are for the second quarter of FY11 beginning January 1, 2011 through March 31, 2011 and the third quarter of FY11 beginning April 1, 2011 through June 30, 2011.

A. Background

The FMAP is used to determine the amount of federal matching for specified state expenditures for assistance payments under programs under the Social Security Act ("the Act"). Sections 1905(b) and 1101(a)(8)(B) of the Act require the Secretary of Health and Human Services to publish the FMAP rates each year. The Secretary calculates the percentages using formulas in sections 1905(b) and 1101(a)(8)(B), and statistics from the Department of Commerce of average income per person in each state and for the Nation as a whole. The percentages must be within the upper and lower limits given in section 1905(b) of the Act. The percentages to be applied to the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are specified separately in the Act, and thus are not based on the statutory formula that determines the percentages for the 50 states.

Section 1905(b) of the Act specifies the formula for calculating the FMAP as follows:

> The FMAP for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the FMAP shall in no case be less than 50 per centum or more than 83 per centum, and (2) the FMAP for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 50 per centum.

Section 4725 of the Balanced Budget Act of 1997 amended section 1905(b) to provide that the FMAP for the District of Columbia for purposes of titles XIX (Medicaid) and XXI (CHIP) shall be 70 percent. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275) amended the FMAP applied to the District of Columbia for maintenance payments under title IV–E programs to make it consistent with the 70 percent Medicaid match rate.

Section 5001 of Division B of the ARRA provides for a temporary increase in FMAP rates for Medicaid and title

IV–E Foster Care, Adoption Assistance and Guardianship Assistance programs. The purpose of the increases to the FMAP rates is to provide fiscal relief to states and to protect and maintain State Medicaid and certain other assistance programs in a period of economic downturn, referred to as the "recession adjustment period." The recession adjustment period was originally defined as the period beginning October 1, 2008 and ending December 31, 2010. Public Law 111–226 extended the recession adjustment period through June 30, 2011. Public Law 111–226 also provided for a phase-down of the general FMAP increase in the last two quarters of the extended recession adjustment period, and changed the look back period for calculating the unemployment adjustment for those quarters.

B. Calculation of the Increased FMAP Rates Under ARRA

Section 5001 of the ARRA specifies that the FMAP rates shall be temporarily increased for the following: (1) Maintenance of FMAP rates for FY09, FY10, and first three calendar quarters of FY11, so that the FMAP rate will not decrease from the prior year, determined by using as the FMAP rate for the current year, the greater of any prior fiscal year FMAP rates between 2008–2010 or the rate calculated for the current fiscal year; (2) in addition to any maintenance increase, the application of a general percentage point increase in each state's FMAP of 6.2 percentage points (decreasing during the last two quarters of the extended recession adjustment period); and (3) an additional percentage point increase based on the state's increase in unemployment during the recession adjustment period. The resulting increased FMAP cannot exceed 100 percent. Each state's FMAP will be recalculated each fiscal quarter beginning October 2008. Availability of certain components of the increased FMAP is conditioned on states meeting statutory programmatic requirements, such as the maintenance of effort requirement, which are not part of the calculation process.

Expenditures for which the increased FMAP is not available under title XIX of the Act include expenditures for disproportionate share hospital payments, certain eligibility expansions, services received through an IHS or tribal facility (which are already paid at a rate of 100 percent and therefore not subject to increase), and expenditures that are paid at an enhanced FMAP rate. The increased FMAP is available for expenditures under part E of title IV of the Act (including Foster Care, Adoption Assistance and Guardianship Assistance programs) only to the extent of a maintenance increase (hold harmless), if any, and the general percentage point increase. The increased FMAP does not apply to other parts of title IV, including part D (Child Support Enforcement Program).

For title XIX purposes only, for each qualifying state with an unemployment rate that has increased at a rate above the statutory threshold percentage, ARRA provides additional relief above the general percentage point increase in FMAP through application of a separate increase calculation. For those states, the FMAP for each qualifying state is increased by the number of percentage points equal to the product of the state matching percentage (as calculated under section 1905(b) and adjusted if necessary for the maintenance of FMAP without reduction from the prior year, and after applying half of the general percentage point increase in the federal percentage) and the applicable percent determined from the state unemployment increase percentage for the quarter.

The unemployment increase percentage for calendar quarters other than the last two quarters of the recession adjustment period is equal to the number of percentage points (if any) by which the average monthly unemployment rate for the state in the most recent previous 3-consecutive-month period for which data are available exceeds the lowest average monthly unemployment rate for the state for any 3-consecutive-month period beginning on or after January 1, 2006. A state qualifies for additional relief based on an increase in unemployment if that state's unemployment increase percentage is at least 1.5 percentage points. The applicable percent is: (1) 5.5 percent if the state unemployment increase percentage is at least 1.5 percentage points but less than 2.5 percentage points; (2) 8.5 percent if the state unemployment increase percentage is at least 2.5 percentage points but less than 3.5 percentage points; and (3) 11.5 percent if the state unemployment increase percentage is at least 3.5 percentage points.

If the state's applicable percent is less than the applicable percent for the preceding quarter, then the higher applicable percent shall continue in effect for any calendar quarter beginning on or after January 1, 2009 and ending before January 1, 2011, as amended by Public Law 111–226. This hold harmless provision is not in effect beginning January 1, 2011.

Under section 5001(b)(2) of ARRA, Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and America Samoa were given the option to make a special one-time election between (1) a 30 percent increase in their cap on Medicaid payments (as determined under subsections (f) and (g) of section 1108 of the Act), or (2) applying the general 6.2 percentage point increase in the FMAP plus a 15 percent increase in the cap on Medicaid payments. There is no quarterly unemployment adjustment for territories. All territories and the Commonwealth of the Northern Mariana Islands elected the 30 percent increase in their spending cap on Medicaid payments; therefore, there is no recalculation of their FMAP rate.

C. Adjusted FMAPs for the Second and Third Quarters of FY2011

ARRA adjustments to FMAPs are shown by state in the accompanying table. The hold harmless FY11 FMAP is the higher of the original FY08, FY09, FY10 or FY11 FMAP. The general increase added to the hold harmless FY11 FMAP is 3.2 percentage points for the second quarter and 1.2 percentage points for the third quarter. The unemployment adjustment is calculated according to the unemployment tier and added to the hold harmless FY11 FMAP with the general percentage point increases.

The unemployment tier for the final two quarters of the recession adjustment period is determined by comparing the highest unemployment rate from any 3-consecutive-month period between January 2010 and December 2010 to the lowest consecutive 3-month average unemployment rate beginning January 1, 2006. Under section 5001(c)(3)(B) of ARRA, through December 31, 2010, a state's applicable percent would not decrease as the result of a lowered unemployment adjustment; but this protection ended December 31, 2010. However, Section 5001 stipulates that the Secretary shall notify a State at least 60 days prior to applying any lower applicable percent to the hold harmless FMAP. Final unemployment data for December 2010 were not available until March 2011. Several states would have had a lower applicable percent because their unemployment tier dropped in 2010, but the Department cannot satisfy the statutory requirement at section 5001(c)(3)(B)(ii) to provide 60 day notice prior to lowering a state's applicable percent due to the availability of the data necessary to perform the calculations. Therefore, the FMAP rates for the final two quarters of the recession adjustment period for

Alaska, New Hampshire, and Vermont will reflect the applicable percent applied for the first quarter of FY11.

FOR FURTHER INFORMATION CONTACT: Rose Chu or Thomas Musco, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 447D—Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–6870.

(Catalog of Federal Domestic Assistance Program Nos. 93.778: Medical Assistance Program; 93.658: Foster Care; 93.659: Adoption Assistance; 93.090: Guardianship Assistance)

Dated: May 26, 2011.

Kathleen Sebelius,

Secretary.

ARRA ADJUSTMENTS TO Q2 FY11

State	Hold harmless FY11 FMAP with 3.2% pt increase	State share	Adjusted state share	Hold harmless FY11 unemployment tier	Unemployment adjustment Q2 FY11	2nd Quarter FY11 FMAP unemployment adjustment
Alabama	71.74	31.46	29.86	11.5	3.43	75.17
Alaska*	55.68	47.52	45.92	8.5	3.90	59.58
Arizona	69.40	33.80	32.20	11.5	3.70	73.10
Arkansas	76.14	27.06	25.46	8.5	2.16	78.30
California	53.20	50.00	48.40	11.5	5.57	58.77
Colorado	53.20	50.00	48.40	11.5	5.57	58.77
Connecticut	53.20	50.00	48.40	11.5	5.57	58.77
Delaware	56.35	46.85	45.25	11.5	5.20	61.55
Dist of Columbia	73.20	30.00	28.40	11.5	3.27	76.47
Florida	60.03	43.17	41.57	11.5	4.78	64.81
Georgia	68.53	34.67	33.07	11.5	3.80	72.33
Hawaii	59.70	43.50	41.90	11.5	4.82	64.52
Idaho	73.07	30.13	28.53	11.5	3.28	76.35
Illinois	53.52	49.68	48.08	11.5	5.53	59.05
Indiana	69.72	33.48	31.88	11.5	3.67	73.39
Iowa	66.71	36.49	34.89	8.5	2.97	69.68
Kansas	63.58	39.62	38.02	8.5	3.23	66.81
Kentucky	74.69	28.51	26.91	11.5	3.09	77.78
Louisiana	75.67	27.53	25.93	11.5	2.98	78.65
Maine	68.19	35.01	33.41	11.5	3.84	72.03
Maryland	53.20	50.00	48.40	11.5	5.57	58.77
Massachusetts	53.20	50.00	48.40	11.5	5.57	58.77
Michigan	68.99	34.21	32.61	11.5	3.75	72.74
Minnesota	53.20	50.00	48.40	11.5	5.57	58.77
Mississippi	79.49	23.71	22.11	11.5	2.54	82.03
Missouri	67.71	35.49	33.89	11.5	3.90	71.61
Montana	71.73	31.47	29.87	11.5	3.44	75.17
Nebraska	63.76	39.44	37.84	5.5	2.08	65.84
Nevada	55.84	47.36	45.76	11.5	5.26	61.10
New Hampshire*	53.20	50.00	48.40	11.5	5.57	58.77
New Jersey	53.20	50.00	48.40	11.5	5.57	58.77
New Mexico	74.55	28.65	27.05	11.5	3.11	77.66
New York	53.20	50.00	48.40	11.5	5.57	58.77
North Carolina	68.33	34.87	33.27	11.5	3.83	72.16
North Dakota	66.95	36.25	34.65	0	0.00	66.95
Ohio	66.89	36.31	34.71	11.5	3.99	70.88
Oklahoma	70.30	32.90	31.30	11.5	3.60	73.90
Oregon	66.05	37.15	35.55	11.5	4.09	70.14
Pennsylvania	58.84	44.36	42.76	11.5	4.92	63.76
Rhode Island	56.17	47.03	45.43	11.5	5.22	61.39
South Carolina	73.52	29.68	28.08	11.5	3.23	76.75
South Dakota	65.92	37.28	35.68	8.5	3.03	68.95
Tennessee	69.05	34.15	32.55	11.5	3.74	72.79
Texas	63.76	39.44	37.84	11.5	4.35	68.11
Utah	74.88	28.32	26.72	11.5	3.07	77.95
Vermont*	62.65	40.55	38.95	11.5	4.48	67.13
Virginia	53.20	50.00	48.40	11.5	5.57	58.77
Washington	54.72	48.48	46.88	11.5	5.39	60.11
West Virginia	77.45	25.75	24.15	11.5	2.78	80.23
Wisconsin	63.41	39.79	38.19	11.5	4.39	67.80
Wyoming	53.20	50.00	48.40	11.5	5.57	58.77

*The unemployment tier for these States decreased but the Department was not able to satisfy the 60 day notice requirement so their unemployment tier was held harmless.

ARRA ADJUSTMENTS TO Q3 FY11

State	Hold harmless FY11 FMAP with 1.2% pt increase	State share	Adjusted state share	Hold harmless FY11 unemployment tier	Unemployment adjustment Q3 FY11	Third quarter FY11 FMAP unemployment adjustment
Alabama	69.74	31.46	30.86	11.5	3.55	73.29
Alaska*	53.68	47.52	46.92	8.5	3.99	57.67
Arizona	67.40	33.80	33.20	11.5	3.82	71.22
Arkansas	74.14	27.06	26.46	8.5	2.25	76.39
California	51.20	50.00	49.40	11.5	5.68	56.88
Colorado	51.20	50.00	49.40	11.5	5.68	56.88
Connecticut	51.20	50.00	49.40	11.5	5.68	56.88
Delaware	54.35	46.85	46.25	11.5	5.32	59.67
Dist of Columbia	71.20	30.00	29.40	11.5	3.38	74.58
Florida	58.03	43.17	42.57	11.5	4.90	62.93
Georgia	66.53	34.67	34.07	11.5	3.92	70.45
Hawaii	57.70	43.50	42.90	11.5	4.93	62.63
Idaho	71.07	30.13	29.53	11.5	3.40	74.47
Illinois	51.52	49.68	49.08	11.5	5.64	57.16
Indiana	67.72	33.48	32.88	11.5	3.78	71.50
Iowa	64.71	36.49	35.89	8.5	3.05	67.76
Kansas	61.58	39.62	39.02	8.5	3.32	64.90
Kentucky	72.69	28.51	27.91	11.5	3.21	75.90
Louisiana	73.67	27.53	26.93	11.5	3.10	76.77
Maine	66.19	35.01	34.41	11.5	3.96	70.15
Maryland	51.20	50.00	49.40	11.5	5.68	56.88
Massachusetts	51.20	50.00	49.40	11.5	5.68	56.88
Michigan	66.99	34.21	33.61	11.5	3.87	70.86
Minnesota	51.20	50.00	49.40	11.5	5.68	56.88
Mississippi	77.49	23.71	23.11	11.5	2.66	80.15
Missouri	65.71	35.49	34.89	11.5	4.01	69.72
Montana	69.73	31.47	30.87	11.5	3.55	73.28
Nebraska	61.76	39.44	38.84	5.5	2.14	63.90
Nevada	53.84	47.36	46.76	11.5	5.38	59.22
New Hampshire*	51.20	50.00	49.40	11.5	5.68	56.88
New Jersey	51.20	50.00	49.40	11.5	5.68	56.88
New Mexico	72.55	28.65	28.05	11.5	3.23	75.78
New York	51.20	50.00	49.40	11.5	5.68	56.88
North Carolina	66.33	34.87	34.27	11.5	3.94	70.27
North Dakota	64.95	36.25	35.65	0	0.00	64.95
Ohio	64.89	36.31	35.71	11.5	4.11	69.00
Oklahoma	68.30	32.90	32.30	11.5	3.71	72.01
Oregon	64.05	37.15	36.55	11.5	4.20	68.25
Pennsylvania	56.84	44.36	43.76	11.5	5.03	61.87
Rhode Island	54.17	47.03	46.43	11.5	5.34	59.51
South Carolina	71.52	29.68	29.08	11.5	3.34	74.86
South Dakota	63.92	37.28	36.68	8.5	3.12	67.04
Tennessee	67.05	34.15	33.55	11.5	3.86	70.91
Texas	61.76	39.44	38.84	11.5	4.47	66.23
Utah	72.88	28.32	27.72	11.5	3.19	76.07
Vermont*	60.65	40.55	39.95	11.5	4.59	65.24
Virginia	51.20	50.00	49.40	11.5	5.68	56.88
Washington	52.72	48.48	47.88	11.5	5.51	58.23
West Virginia	75.45	25.75	25.15	11.5	2.89	78.34
Wisconsin	61.41	39.79	39.19	11.5	4.51	65.92
Wyoming	51.20	50.00	49.40	11.5	5.68	56.88

*The unemployment tier for these States decreased but the Department was not able to satisfy the 60 day notice requirement so their unemployment tier was held harmless.

[FR Doc. 2011–13783 Filed 6–2–11; 8:45 am]

BILLING CODE 4150–05–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: "Barriers to Meaningful Use in Medicaid." 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 March 11th, 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 July 5, 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

Barriers to Meaningful Use in Medicaid

The Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5), provides for financial incentives for Medicaid providers to adopt and "meaningfully use" certified electronic health record (EHR) technologies. To ensure that eligible professionals (EPs) are able to qualify for and access these incentives, AHRQ proposes a 2-year project with the objective of understanding the barriers that Medicaid health providers encounter along the way to achieving the meaningful use of EHRs. This proposed information collection will allow AHRQ to synthesize knowledge regarding the barriers that EPs encounter when attempting to achieve meaningful use and translate that knowledge to develop technical assistance and support implementation and use of EHRs.

Further, health care providers who serve Medicaid beneficiaries are serving many of AHRQ's priority populations: Inner city; rural; low income; minority; women; children; elderly; and those with special health care needs. The project is designed to solicit actionable recommendations on what activities can best help Medicaid providers take advantage of incentive payments, achieve meaningful use, and ultimately use health IT to improve health care for the Medicaid population. The information gathered under this project will also be used to inform the development of the Stage 2 and 3 Meaningful Use criteria.

In order to gather, analyze, and synthesize information on the barriers to the meaningful use criteria experienced by Medicaid providers this research has the following goals:

(1) Identify the barriers to eligibility for the incentive payments; barriers to adoption, implementation, or upgrading of EHR systems; and barriers to achieving meaningful use.

(2) Develop actionable recommendations to overcoming the barriers identified in #1 above, including, but not limited to, technical assistance that could be made available to Medicaid providers.

(3) Provide data to inform the meaningful use objectives being developed by the Center for Medicare & Medicaid Services (CMS) for Stages 2 and 3 of the EHR Incentive Program.

This study is being conducted by AHRQ through its contractor, RTI International, pursuant to AHRQ's statutory authority to conduct and support research to advance both training for health care practitioners in the use of information systems and the use of computer-based health records. 42 U.S.C. 299b–3(a)(2) and (6).

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

(1) A screening questionnaire will be used to identify eligible participants, as part of the sampling procedure for the focus groups. Appended to the screening questionnaire is a series of questions for individuals who have agreed to participate in the focus groups, in order to collect descriptive and demographic information prior to the focus group session, and as part of the analysis plan.

(2) A total of 13 focus groups will be conducted with eligible Medicaid providers. Eight focus groups will include a mix of pediatricians, other physicians, dentists, nurse practitioners, physician assistants, and certified nurse midwives who have adopted an EHR. Four of the focus groups will include providers who have not adopted an EHR, and the final group will be comprised of private practice dentists. Private practice dentists are being considered separately due to the fact that their practice patterns are likely to vary substantially from those of primary care physicians and non-physician providers. The purpose of these focus groups is to gather information about adoption issues (factors in the decision to adopt an EHR), implementation issues (organizational or environmental factors that facilitate EHR implementation and training), upgrade issues (challenges to transitioning to certified EHRs), and challenges to achieving meaningful use of EHRs as defined in Federal regulations for Stage 1 (particular functions that are problematic, the source of the challenge). Responses will also address topics related to participants' knowledge of the EHR incentive program and other factors that may facilitate EHR use. The focus group moderator will use the moderator's guide to guide discussion. The show cards will provide key reminders of content for discussion.

The information will be used to develop actionable recommendations to overcoming barriers to meaningful use of EHRs for Medicaid providers, including but not limited to technical assistance that could be made available to Medicaid providers. Furthermore, the data gathered through this research will inform the meaningful use objectives being developed by CMS for Stages 2 and 3 of the EHR Incentive Program. Three types of information will be collected: List of potential focus group participants, descriptive and demographic information about focus group participants, and the information gathered at each focus group related to the barriers to meaningful use. The information will be synthesized to provide information to the Federal government to inform the future meaningful use regulations and understand any disparities potentially resulting from the implementation of the incentive programs.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this research. The screening questionnaire will be completed by 300 clinicians and will take 12 minutes to complete on average. Focus groups will be conducted with not more than 89 clinicians and will last about 2 hours, except for the focus groups with non-users, which will last about 90 minutes. The total annual burden hours are estimated to be 228 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 $16,795.

Exhibit 1. Estimated Annualized Burden Hours

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Screening Questionnaire	300	1	12/60	60
In-Person Focus Groups EHR Users only	40	1	2	80
Virtual Focus Groups EHR Users only	29	1	2	58
Virtual Focus Groups EHR Non-users only	20	1	1.5	30
Total	389	na	na	228

Exhibit 2. Estimated Annualized Cost Burden

Data collection	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Screening Questionnaire	300	60	73.66	$4,420
In-Person Focus Groups EHR Users only	40	80	73.66	5,893
Virtual Focus Groups EHR Users only	29	58	73.66	4,272
Virtual Focus Groups EHR Non-users only	20	30	73.66	2,210
Total	389	228	na	$16,795

*Hourly wage rate is the weighted average of hourly rates of the types of professionals who will complete the screening questionnaire and participate in the focus groups. The weighted average includes the following occupational codes and wage rates: 29–1065 (Pediatricians, General), $78.67; 29–1069 (Physicians and Surgeons, all others), $97.35; 29–1021 (Dentists, General), $76.61; 29–1111 (Registered Nurses, includes Certified Nurse Midwives), $32.35; 29–1071 (Physician Assistants), $41.86. Source: "National Compensation Survey: Occupational Wages in the United States 2009," U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost to the government for conducting this research. The total cost is estimated to be $424,493.

Exhibit 3. Estimated Total and Annualized Cost

Cost component	Total cost	Annualized cost
Project Development	$79,313	$39,657
Data Collection Activities	99,464	49,732
Data Processing and Analysis	49,732	24,866
Publication of Results	38,415	19,208
Project Management	37,601	18,801
Overhead	119,968	59,984
Total	$424,493	$212,247

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: May 20, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–13740 Filed 6–2–11; 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.

This proposed information collection was previously published in the **Federal Register** on March 25th, 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 July 5, 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

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 are 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 resonse	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	51
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: May 20, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–13742 Filed 6–2–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–0106]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Preventive Health and Health Services Block Grant (OMB No. 0920–0106, exp. 8/31/2011)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCDDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Preventive Health and Health Services Block Grant program provides awardees with their primary source of flexible funding for health promotion and disease prevention programs. Sixty-one awardees (50 states, the District of Columbia, two American Indian Tribes, and eight U.S. territories) currently receive block grants from CDC in order to address locally-defined public health needs in innovative ways. Block Grants allow awardees to prioritize the use of funds to fill funding gaps in programs that deal with the leading causes of death and disability. Block Grants also improve awardees' ability to respond rapidly to emerging health issues.

CDC currently collects standardized application and performance information from each awardee through a web-based system called the Block Grant Management Information System (BGMIS). As required by the authorizing legislation for the Block Grant program, the BGMIS collects information by the areas described in Healthy People National Health Objectives, and improves adherence to its goals. The BGMIS requires awardees to enter their objectives in SMART (Specific, Measurable, Achievable, Realistic, and Time-based) format, and to use evidence based guidelines and best practices as the basis for public health programs and interventions. Finally, the BGMIS information collection includes a Compliance Review section, which provides feedback to each awardee pertaining to its past reviews.

Information will be collected from awardees twice per year, once for the annual Work Plan, and once for the Annual Report. CDC will continue to use the information collected from Block Grant awardees to provide oversight and direction to recipients and to inform CDC management, decision makers, and the general public about PHHS Block Grant allocations, activities, and outcomes. There are no changes to the information being collected during the period of this Revision request, however, there are expected reductions in the estimated burden per response for both the Work Plan and the Annual Report. These reductions are due to changes in the BGMIS, which has been modified to allow pre-population of some fields. Respondents will only need to update information already entered into the system, thus improving the efficiency of reporting and reducing the burden per response. In addition, the guidance documents for both information collections are being revised to improve their usability.

All information is collected electronically. There are no costs to respondents other than their time. The estimated annualized burden hours are 2,135.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
PHHS Block Grant Awardees	Work Plan	61	1	20
	Annual Report	61	1	15

Dated: May 27, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–13762 Filed 6–2–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP); Initial Review

The meeting announced below concerns Human Immunodeficiency Virus (HIV) Prevention Projects for Young Men of Color, Funding Opportunity Announcement (FOA) PS11–1113, initial review.

Correction: The notice was published in the **Federal Register** on February 22, 2011, Volume 76, Number 35, Pages 9785–9786. The place should read as follows:

Place: Hilton Atlanta Hotel, 255 Courtland Street, NE., Atlanta, Georgia 30303, *Telephone:* (404) 659–2000.

Contact Person for More Information: Harriette Lynch, Public Health Analyst, Extramural Programs, National Center for HIV, Hepatitis and Sexually Transmitted Diseases Prevention, CDC, 1600 Clifton Road, NE., Mailstop E–60, Atlanta, Georgia 30333, *Telephone:* (404) 498–2726, e-mail *HLynch@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: May 25, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–13767 Filed 6–2–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: State Court Improvement Program.

OMB No. 0970–0307.

Description

From the funds appropriated for the Promoting Safe and Stable Families Program (PSSF), $10 million is reserved annually for each of three grants to facilitate the State Court Improvement Program (CIP) to facilitate court improvement in the handling of child abuse and neglect cases.

The Court Improvement Program (CIP) is composed of three grants, the basic, data, and training grants, governed by two separate Program Instructions (PIs). The training and data grants are governed by the "new grant" PI and the basic grant is governed by the "basic grant" PI. Current PIs require separate applications and program assessment reports for each grant. Every State applies for at least two of the grants annually and most States apply for all three. As many of the application requirements are the same for all three grants, this results in duplicative work and high degrees of repetition for State courts applying for more than one CIP grant.

The purpose of this Program Instruction is to streamline and simplify the application and reporting processes by consolidating the PIs into one single PI and requiring one single, consolidated application package and program assessment report per State court annually. These revisions will satisfy statutory programmatic requirements and reduce both the number of required responses and associated total burden hours for State courts. This new PI also describes programmatic and fiscal provisions and reporting requirements for the grants, specifies the application submittal and approval procedures for the grants for fiscal years 2012 through 2015, and identifies technical resources for use by State courts during the course of the grants. The agency uses the information received to ensure compliance with the statute and provide training and technical assistance to the grantees.

Respondents: State Courts.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	92	4,784
Annual Reports	52	1	86	4,472

Estimated Total Annual Burden Hours: 9,256.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded 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. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–13768 Filed 6–2–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0410]

Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the procedure by which a manufacturer or distributor of dietary supplements or of a new dietary ingredient is to submit information to FDA upon which it has based its conclusion that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe.

DATES: Submit either electronic or written comments on the collection of information by August 2, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Premarket Notification for a New Dietary Ingredient—21 CFR 190.6 (OMB Control Number 0910–0330)—Extension

Section 413(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 350b(a)) provides that at least 75 days before the introduction or delivery for introduction into interstate commerce of a dietary supplement that contains a new dietary ingredient, a manufacturer or distributor of dietary supplements or of a new dietary ingredient is to submit to FDA (as delegate for the Secretary of Health and Human Services) information upon which the manufacturer or distributor has based its conclusion that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe (part 190 (21 CFR part 190)) implements these statutory provisions. Section 190.6(a) requires each manufacturer or distributor of a dietary supplement containing a new dietary ingredient, or of a new dietary ingredient, to submit to the Office of Nutrition, Labeling, and Dietary Supplements notification of the basis for their conclusion that said supplement or ingredient will reasonably be expected to be safe. Section 190.6(b) requires that the notification include the following: (1) The complete name and address of the manufacturer or distributor; (2) the name of the new dietary ingredient; (3) a description of the dietary supplements that contain the new dietary ingredient; and (4) the history of use or other evidence of safety establishing that the dietary ingredient will reasonably be expected to be safe.

The notification requirements described previously are designed to enable FDA to monitor the introduction into the food supply of new dietary ingredients and dietary supplements that contain new dietary ingredients, in order to protect consumers from the introduction of unsafe dietary supplements into interstate commerce. FDA uses the information collected under these regulations to help ensure that a manufacturer or distributor of a dietary supplement containing a new dietary ingredient is in full compliance with the FD&C Act.

Description of Respondents: The respondents to this collection of information are firms in the dietary supplement industry, including dietary supplement and dietary ingredient manufacturers, packagers and re-packagers, holders, labelers and re-labelers, distributors, warehouses, exporters, and importers.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
190.6	55	1	55	20	1,100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The Agency believes that there will be minimal burden on the industry to generate data to meet the requirements of the premarket notification program because the Agency is requesting only that information that the manufacturer or distributor should already have developed to satisfy itself that a dietary supplement containing a new dietary ingredient is in full compliance with the FD&C Act. However, the Agency estimates that extracting and summarizing the relevant information from the company's files, and presenting it in a format that will meet the requirements of Section 413 of the FD&C Act will require a burden of approximately 20 hours of work per submission.

The estimated number of premarket notifications and hours per response is an average based on the Agency's experience with notifications received during the last 3 years and information from firms that have submitted recent premarket notifications. FDA received 77 notifications in 2008, 39 notifications in 2009, and 48 notifications in 2010, for an average of 55 notifications. Accordingly, we estimate that 55 respondents will submit one premarket notification each and that it will take a respondent 20 hours to prepare the notification, for a total of 1,100 hours.

Dated: May 26, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–13815 Filed 6–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0564]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Restaurant Menu and Vending Machine Labeling; Registration for Small Chains Under Section 4205 of the Patient Protection and Affordable Care Act of 2010

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Restaurant Menu and Vending Machine Labeling: Registration for Small Chains Under Section 4205 of the Patient Protection and Affordable Care Act of 2010" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 31, 2011 (76 FR 5384), the Agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0664. The approval expires on April 30, 2013. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: May 19, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–13814 Filed 6–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0403]

Agency Information Collection Activities; Proposed Collection; Comment Request; Substantiation for Dietary Supplement Claims Made Under the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and the guidance entitled "Guidance for Industry: Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act."

DATES: Submit either electronic or written comments on the collection of information by August 2, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C.

3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Substantiation for Dietary Supplement Claims Made Under the Federal Food, Drug, and Cosmetic Act—21 U.S.C. 343(r)(6) (OMB Control Number 0910–0626)—Extension

Section 403(r)(6) of the FD&C Act (21 U.S.C. 343(r)(6)) requires that a manufacturer of a dietary supplement making a nutritional deficiency, structure/function, or general well-being claim have substantiation that the statement is truthful and not misleading. Under section 403(r)(6)(A) of the FD&C Act, such a statement is one that "claims a benefit related to a classical nutrient deficiency disease and discloses the prevalence of such disease in the United States [(U.S.)], describes the role of a nutrient or dietary ingredient intended to affect the structure or function in humans, characterizes the documented mechanism by which a nutrient or dietary ingredient acts to maintain such structure or function, or describes general well-being from consumption for a nutrient or dietary ingredient."

The guidance document entitled "Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act" provides FDA's recommendations to manufacturers about the amount, type, and quality of evidence they should have to substantiate a claim under section 403(r)(6). The guidance does not discuss the types of claims that can be made concerning the effect of a dietary supplement on the structure or function of the body, nor does it discuss criteria to determine when a statement about a dietary supplement is a disease claim. The guidance document is intended to assist manufacturers in their efforts to comply with section 403(r)(6). Persons with access to the Internet may obtain the guidance at *http://www.cfsan.fda.gov/~dms/guidance.html*.

Dietary supplement manufacturers collect the necessary substantiating information for their product as required by section 403(r)(6). The guidance provides information to manufacturers to assist them in doing so. The recommendations contained in the guidance are voluntary. Dietary supplement manufacturers will only need to collect information to substantiate their product's nutritional deficiency, structure/function, or general well-being claim if they choose to place a claim on their product's label.

The standard discussed in the guidance for substantiation of a claim on the labeling of a dietary supplement is consistent with standards set by the Federal Trade Commission for dietary supplements and other health-related products that the claim be based on competent and reliable scientific evidence. This evidence standard is broad enough that some dietary supplement manufacturers may only need to collect peer-reviewed scientific journal articles to substantiate their claims; other dietary supplement manufacturers whose products have properties that are less well documented may have to conduct studies to build a body of evidence to support their claims. It is unlikely that a dietary supplement manufacturer will attempt to make a claim when the cost of obtaining the evidence to support the claim outweighs the benefits of having the claim on the product's label. It is likely that manufacturers will seek substantiation for their claims in the scientific literature.

The time it takes to assemble the necessary scientific information to support their claims depends on the product and the claimed benefits. If the product is one of several on the market making a particular claim for which there is adequate publicly available and widely established evidence supporting the claim, then the time to gather supporting data will be minimal; if the product is the first of its kind to make a particular claim or the evidence supporting the claim is less publicly available or not widely established, then gathering the appropriate scientific evidence to substantiate the claim will be more time consuming.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Claim type	No. of respondents	No. of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Widely known, established	667	1	667	44	29,348
Pre-existing, not widely established	667	1	667	120	80,040
Novel	667	1	667	120	80,040
Total					189,428

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA assumes that it will take 44 hours to assemble information needed to substantiate a claim on a particular dietary supplement when the claim is widely known and established. FDA believes it will take closer to 120 hours to assemble supporting scientific information when the claim is novel or when the claim is pre-existing but the scientific underpinnings of the claim are not widely established. These are claims that may be based on emerging science, where conducting literature searches and understanding the literature takes time. It is also possible that references for claims made for some dietary ingredients or dietary supplements may primarily be found in foreign journals

and in foreign languages or in the older, classical literature where it is not available on computerized literature databases or in the major scientific reference databases, such as the National Library of Medicine's literature database, all of which increases the time of obtaining substantiation.

In the **Federal Register** of January 6, 2000 (65 FR 1000), FDA published a final rule on statements made for dietary supplements concerning the effect of the product on the structure or function of the body. FDA estimated that there were 29,000 dietary supplement products marketed in the U.S. (65 FR 1000 at 1045). Assuming that the flow of new products is 10 percent per year, then 2,900 new dietary supplement products will come on the market each year. The structure/function final rule estimated that about 69 percent of dietary supplements have a claim on their labels, most probably a structure/function claim (65 FR 1000 at 1046). Therefore, we assume that supplement manufacturers will need time to assemble the evidence to substantiate each of the 2,001 claims (2,900 × 69 percent) made each year. If we assume that the 2,001 claims are equally likely to be pre-existing widely established claims, novel claims, or pre-existing claims that are not widely established, then we can expect 667 of each of these types of claims to be substantiated per year. Table 1 of this document shows that the annual burden hours associated with assembling evidence for claims is 189,428 (the sum of 667 × 44 hours, 667 × 120 hours, and 667 × 120 hours).

Dated: May 26, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–13813 Filed 6–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0067]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Data To Support Drug Product Communications, as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 5, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, *Fax:* 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title "Data to Support Drug Product Communications, as Used by the Food and Drug Administration." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Data To Support Drug Product Communications, as Used by the Food and Drug Administration—(OMB Control Number 0910–NEW)

Testing of communication messages in advance of a communication campaign provides an important role in improving FDA communications as they allow for an indepth understanding of individuals' attitudes, beliefs, motivations, and feelings. The methods to be employed include individual indepth interviews, general public focus group interviews, intercept interviews, self-administered surveys, gatekeeper surveys, and professional clinician focus group interviews. The methods to be used serve the narrowly defined need for direct and informal opinion on a specific topic and, as a qualitative research tool, have two major purposes:

- To obtain information that is useful for developing variables and measures for formulating the basic objectives of risk communication campaigns and
- To assess the potential effectiveness of messages and materials in reaching and successfully communicating with their intended audiences.

FDA will use these methods to test and refine its ideas and to help develop messages and other communications but will generally conduct further research before making important decisions, such as adopting new policies and allocating or redirecting significant resources to support these policies.

FDA's Center for Drug Evaluation and Research, Center for Biologics Evaluation and Research, Office of the Commissioner, and any other Centers or Offices will use this mechanism to test messages about regulated drug products on a variety of subjects related to consumer, patient, or health care professional perceptions and about use of drug products and related materials, including but not limited to, direct-to-consumer prescription drug promotion, physician labeling of prescription drugs, Medication Guides, over-the-counter drug labeling, emerging risk communications, patient labeling, online sale of medical products, and consumer and professional education.

In the **Federal Register** of February 8, 2011 (76 FR 6800), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours) [2]	Total hours
Interviews/Surveys	19,822	1	19,822	14/60	4,757

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Burden estimates of less than 1 hour are expressed as a fraction of an hour in the format "[number of minutes per response]/60".

Annually, FDA projects about 45 communication studies using the variety of test methods listed previously in this document. FDA is requesting this burden so as not to restrict the Agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

Dated: May 18, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–13812 Filed 6–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2003–D–0433] (formerly FDA–2003D–0474)

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Revised Guidance for Industry on "Studies To Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach To Establish a Microbiological ADI" (VICH GL–36(R)); Request for Comments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comments of a draft revised guidance for industry (#159) entitled "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Establish a Microbiological ADI" (VICH GL36(R)). This draft revised guidance, which updates a final guidance on the same topic for which a notice of availability was published in the **Federal Register** of February 11, 2005, has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft revised VICH guidance was revised to include Appendix D—Supplement to Section 2 Regarding the Determination of the Fraction of Oral Dose Available to Microorganisms. This draft VICH guidance document is intended to provide guidance for assessing the human food safety of residues from veterinary antimicrobial drugs with regard to effects on the human intestinal flora.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft revised guidance before it begins work on the final version of the revised guidance, submit either electronic or written comments on the draft revised guidance by August 2, 2011.

ADDRESSES: Submit written requests for single copies of the draft revised guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft revised guidance document.

Submit electronic comments on the draft revised guidance 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: Silvia A. Pineiro, Center for Veterinary Medicine, (HFV–157), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 240–276–8227, *Silvia.Pineiro@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use (ICH) for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, the U.S. FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also

participates in the VICH Steering Committee meetings.

II. Guidance on Microbiological Acceptable Daily Intake

In February 2011, the VICH Steering Committee agreed that a draft revised guidance entitled "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Establish a Microbiological ADI (Revision)" (VICH GL36(R)) should be made available for public comment. This draft revised VICH guidance is a revision of a final guidance on the same topic for which a notice of availability was published in the **Federal Register** of February 11, 2005 (70 FR 7278). This draft revised guidance was revised to include Appendix D–Supplement to Section 2 Regarding the Determination of the Fraction of Oral Dose Available to Microorganisms. This VICH guidance provides guidance for assessing the human food safety of residues from veterinary antimicrobial drugs with regard to effects on the human intestinal flora. The objectives of this guidance are to: (1) Outline the recommended steps in determining the need for establishing a microbiological acceptable daily intake (ADI); (2) recommend test systems and methods for determining no-observable adverse effect concentrations (NOAECs) and no-observable adverse effect levels (NOAELs) for the endpoints of health concern; and (3) recommend a procedure to derive a microbiological ADI. It is recognized that different tests may be useful. The experience gained with the recommended tests may result in future modifications to this guidance and its recommendations.

The draft revised guidance is a product of the Quality Expert Working Group of the VICH. Comments about this draft will be considered by FDA and the VICH Quality Expert Working Group.

III. Paperwork Reduction Act of 1995

This draft revised guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this revised guidance have been approved under OMB control number 0910–0032.

IV. Significance of Guidance

This draft revised guidance, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated "guidance" rather than "guideline." In addition, guidance documents must not include mandatory language such as "must," "shall," "require" or "requirement" unless FDA is using these words to describe a statutory or regulatory requirement.

This draft revised VICH guidance when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of applicable statutes and regulations.

V. 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.

VI. Electronic Access

Persons with access to the Internet may obtain the draft revised guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: May 31, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–13821 Filed 6–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Tobacco Products Scientific Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Tobacco Products Scientific Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 21, 2011, from 9 a.m. to 5 p.m., and on July 22, 2011, from 8 a.m. to 5 p.m.

Location: Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–287–1373.

Contact Person: Caryn Cohen, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–287–1373 (choose option 4), e-mail: *TPSAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On the morning of July 21, 2011, the committee will discuss changes proposed by committee members to the Tobacco Products Scientific Advisory Committee (TPSAC) Menthol Report submitted to the Agency on March 18, 2011. The committee will consider additional oral and written comments from the public on the Menthol Report and the proposed changes to the report, as submitted according to the instructions in the *Procedure* portion of this document. The committee will consider and deliberate on proposed changes to the report and adopt amendments that constitute the advice of the committee. Redacted versions of the document, reflecting the changes to the report proposed by the committee members, will be made available on the FDA Web site at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/ucm237359.htm,* no later than June 22, 2011. On the afternoon of July 21, 2011, and on July 22, 2011, the TPSAC will initiate discussions on the issue of the nature and impact of the use of dissolvable tobacco products on the

public health. These discussions will begin the process for the TPSAC's required report to the Secretary of Health and Human Services regarding the issue of the nature and impact of the use of dissolvable tobacco products on the public health, including such use among children. The final report should take into consideration the following: (1) The risks and benefits to the population as a whole, including users and nonusers of tobacco products; (2) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and (3) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

FDA intends to make redacted background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: On July 21, 2011, from 9 a.m. to 5 p.m., and on July 22, from 8 a.m. to 12 noon, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 5, 2011. Oral presentations from the public will be scheduled between approximately 10 a.m. and 11 a.m. on both July 21, 2011, and July 22, 2011. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 27, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 28, 2011.

Closed Committee Deliberations: On July 22, 2011, from 1 p.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)). This portion of the meeting must be closed because the Committee will be discussing trade secret and/or confidential data regarding dissolvable tobacco products provided by the tobacco companies.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Caryn Cohen at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 25, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–13779 Filed 6–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Gastrointestinal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastrointestinal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 21, 2011, from 8 a.m. to 4 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD 20910. The hotel's phone number is 301–589–5200.

Contact Person: Kristine T. Khuc, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *Fax:* 301–847–8533, *e-mail: GIDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On July 21, 2011, the committee will discuss the results from a clinical trial of supplement biologics license application 103772/5301, REMICADE (infliximab), by Centocor Ortho Biotech Inc., in the treatment of pediatric patients with moderately to severely active ulcerative colitis.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 6, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or

arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 27, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 28, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristine T. Khuc at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 25, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–13778 Filed 6–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 9, 2011, 11 a.m. to June 10, 2011, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on May 25, 2011, 76 FR 30372–30373.

The meeting will be held July 6, 2011, 10 a.m. to July 7, 2011, 5 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 27, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13793 Filed 6–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 15, 2011, 12 p.m. to June 15, 2011, 1 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on May 25, 2011, 76 FR 30372–30373.

The meeting will be held June 14, 2011, 1 p.m. to 2 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13792 Filed 6–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: Cell Biology and Development.

Date: June 23–24, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Ross D Shonat, PH.D, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, 301–435–2786, *ross.shonat@nih.hhs.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Neuroscience.

Date: June 27–29, 2011.

Time: 8 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Carol Hamelink, PH.D, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Physiology and Pathobiology of Cardiovascular and Respiratory Systems.

Date: June 28–29, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Abdelouahab Aitouche, PH.D, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7812, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RM10–017: Production of Affinity Reagents for Human Transcription Factors.

Date: July 7, 2011.

Time: 7:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Joseph D Mosca, PH.D, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435–2344, *moscajos@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: May 27, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13794 Filed 6–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Vendor Outreach Workshop for Construction Small Businesses

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Office of Small and Disadvantaged Business Utilization of the Department of the Interior is hosting a Vendor Outreach Workshop for construction small businesses that are interested in doing business with the Department. This outreach workshop will review market contracting opportunities for the attendees. Business owners will be able to share their individual perspectives with Contracting Officers, Program Managers and Small Business Specialists from the Department.

DATES: The workshop will be held on June 3, 2011, from 7–9 p.m.

ADDRESSES: The workshop will be held at the Main Interior Auditorium at 1849 C Street, NW., Washington, DC 20240. Register online at: *http://www.doi.gov/osdbu.*

FOR FURTHER INFORMATION CONTACT: Mark Oliver, Director, Office of Small and Disadvantaged Business Utilization, 1951 Constitution Ave., NW., MS–320 SIB, Washington, DC 20240, telephone 1–877–375–9927 (Toll-Free).

SUPPLEMENTARY INFORMATION: In accordance with the Small Business Act, as amended by Public Law 95–507, the Department has the responsibility to promote the use of small and small disadvantaged business for its acquisition of goods and services. The Department is proud of its accomplishments in meeting its business goals for small, small disadvantaged, 8(a), woman-owned, HUBZone, and service-disabled veteran-owned businesses. In Fiscal Year 2010, the Department awarded over 50 per cent of its $4.4 billion in contracts to small businesses and in Fiscal Year 2009 also awarded over 50 percent of its $2.9 billion in contracts to small businesses.

This fiscal year, the Office of Small and Disadvantaged Business Utilization is reaching out to our internal stakeholders and the Department's small business community by conducting several vendor outreach workshops. The Department's presenters will focus on contracting and subcontracting opportunities and how small businesses can better market services and products. Over 300 small businesses have been targeted for this event. If you are a small business interested in working with the Department, we urge you to register online at: *http://www.doi.gov/osdbu* and attend the workshop.

These outreach events are a new and exciting opportunity for the Department's bureaus and offices to improve their support for small business. Additional scheduled events are posted on the Office of Small and Disadvantaged Business Utilization Web site at *http://www.doi.gov/osdbu.*

Mark Oliver,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 2011–13622 Filed 6–2–11; 8:45 am]

BILLING CODE 4210–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N117; 96300–1671–0000–P5]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
37678A	David Phillips	76 FR 20705; April 13, 2011	May 19, 2011.
37443A.	Metro Richmond Zoo	76 FR 18239; April 1, 2011	May 23, 2011.
31183A	Zoological Society of San Diego	76 FR 2408; January 13, 2011	March 10, 2011.
27787A	Virginia Aquarium & Marine Science Center	76 FR 2408; January 13, 2011	February 15, 2011.
26030A	Drexel University, Dept. of Biology	75 FR 69701; November 15, 2010	February 25, 2011.
22077A	Texas A&M University, Schubot Exotic Bird Health Center.	75 FR 69701; November 15, 2010	March 29, 2011.
008519	Zoo Atlanta	75 FR 82409; December 30, 2010	March 11, 2011.
37370A	Samuel Monarch	76 FR 18239, April 1, 2011	May 24, 2011.
36490A	Roger Jones	76 FR 18239, April 1, 2011	May 24, 2011

MARINE MAMMALS

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
078744	Texas A&M University, Dr. Randall Davis	76 FR 2408; January 13, 2011	May 19, 2011.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to:

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–13805 Filed 6–2–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N118; 96300–1671–0000–P5]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibit activities with listed species unless a Federal permit is issued that allows such activities. The ESA law requires that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before July 5, 2011.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES.** If you provide an e-mail address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), requires that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: James Bibler, Russellville, AR; PRT–43716A.

Applicant: Keith Jefferson, Riverview, FL; PRT–43070A.

Applicant: Larry Hildreth, Tyler, TX; PRT–44242A.

Applicant: Scott McConnell, Poynette, WI; PRT–44162A.

Applicant: Lee Moore, Baker, MT; PRT–43956A.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–13804 Filed 6–2–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2011–N102; 40120–1112–0000–F2]

Final Supplemental Environmental Impact Statement and Record of Decision for Incidental Take of the Endangered Alabama Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service (Service), announces the availability of a final supplemental environmental impact statement (SEIS) which analyzes the environmental impacts associated with incidental take permits requested under the Endangered Species Act of 1973 (Act), as amended, for take of Alabama beach mouse (*Peromyscus polionotus ammobates*). For record of decision (ROD) availability, see **DATES.**

DATES: The ROD will be available no sooner than July 5, 2011.

ADDRESSES: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to either of the following offices within 30 days of the date of publication of this notice: David Dell, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345; or Field Supervisor, Fish and Wildlife Service, 1208–B Main Street, Daphne, AL 36526.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator (See **ADDRESSES**), *telephone:* 404/679–7313; or Ms. Shannon Holbrook, Field Office Project Manager, at the Daphne Field Office (See **ADDRESSES**), *telephone:* 251/441–5871.

SUPPLEMENTARY INFORMATION: The Final SEIS analyzes the consequences of the proposed action and alternatives to the proposed action. The incidental take permits requested by Gulf Highlands LLC and Beach Club West, involve the construction, occupancy, use, operation, and maintenance of two residential and recreational condominium development projects on the Fort Morgan Peninsula in Baldwin County, Alabama.

On April 28, 2006, we published a notice of availability for a draft EIS (71 FR 25221). A Final EIS and ROD were advertised November 29, 2006 (71 FR 69141). Based on that Final EIS and review under the Act, two incidental take permits were issued by the Service in January 2007. As a result of legal challenges to the Service's decision to issue the incidental take permits, a preliminary injunction against the two developments was imposed May 3, 2007. Reevaluation of the projects on voluntary remand led to their withdrawal by the applicants for redesign. The applicants repositioned the proposed condominium projects about 600 feet further inland to avoid habitats considered essential for Alabama beach mouse survival and continued existence. This redesigned project would result in wetland fill under jurisdiction of the Clean Water Act, so the Corps of Engineers became a cooperating agency in developing the SEIS. Revised project plans were submitted by the applicants in February 2009. A notice of availability for the Draft SEIS, incorporating the revised project plans, was published June 17, 2010 (75 FR 34476), for a 90-day public comment period. For ROD availability, see **DATES**.

The SEIS analyzes the preferred alternative, as well as a full range of reasonable alternatives, and the associated impacts of each. Alternative 3 (Preferred Alternative) concentrates the development on the eastern portion of the site and provides for dedication of 135 acres of Permittee-owned lands into conservation status via covenants, conditions, and restrictions attached to the property, and conditions on any incidental take permit that might be issued.

Authority: The environmental review of this project is being conducted in accordance with the requirements of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR parts 1500 through 1508), and with other appropriate Federal laws and regulations, policies, and procedures of the Service for compliance with those regulations.

Dated: May 17, 2011.

Patrick J. Leonard,

Acting Regional Director.

[FR Doc. 2011–13761 Filed 6–2–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Birds; Take of Migratory Birds by the Armed Forces

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The 2003 National Defense Authorization Act (Authorization Act) provided interim authority to members of the Armed Forces to incidentally take migratory birds during approved military readiness activities without violating the Migratory Bird Treaty Act (MBTA). The Authorization Act provided this interim authority to give the Secretary of the Interior (Secretary) time to exercise his/her authority under Section 704(a) of the MBTA to prescribe regulations authorizing such incidental take. The Secretary delegated this task to the U.S. Fish and Wildlife Service (Service). On February 28, 2007, the Service issued a final military readiness rule authorizing members of the Armed Forces to incidentally take migratory birds.

The Authorization Act also stated that the period of application of interim incidental take authority would expire when the Service publishes a notice in the **Federal Register** that: (1) Prescribes regulations authorizing incidental take of migratory birds by the Armed Forces; (2) all legal challenges to the regulations have been exhausted; and (3) the regulations have taken effect. The Service hereby provides the notice required by the Authorization Act that the period of application for interim incidental take authority has expired. The Service prescribed the necessary regulations on February 28, 2007, the regulations took effect on March 30, 2007, and there were no challenges to those regulations filed during the allotted time period.

FOR FURTHER INFORMATION CONTACT: Dr. George Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, at 703–358–1825.

SUPPLEMENTARY INFORMATION: On December 2, 2002, the President signed the 2003 National Defense Authorization Act (Authorization Act). Section 315 of the Authorization Act provided that, not later than one year after its enactment, the Secretary of the Interior (Secretary) should exercise his/her authority under Section 704(a) of the MBTA to prescribe regulations authorizing the Armed Forces to incidentally take migratory birds during those military readiness activities authorized by the Secretary of Defense or the Secretary of the military department concerned. The Authorization Act further required the Secretary to promulgate such regulations with the concurrence of the Secretary of Defense. The Secretary delegated this task to the Service.

The Authorization Act also provided interim authority allowing members of the Armed Forces to incidentally take migratory birds during military readiness activities for a period beginning on the date of enactment of the Act (December 2, 2002) and ending on the date on which the Secretary publishes in the **Federal Register** a notice that—

(1) Regulations authorizing the incidental taking of migratory birds by members of the Armed Forces have been prescribed in accordance with the requirements of the Act;

(2) All legal challenges to the regulations and to the manner of their promulgation (if any) have been exhausted as provided in subsection (e) [which states that all challenges must be filed in Federal court within 120 days

of publication of regulations in the **Federal Register**]; and

(3) The regulations have taken effect.

The Service published the military readiness final rule authorizing the referenced incidental take in the Federal Register on February 28, 2007 (72 FR 8931). The Service published the rule in coordination and cooperation with the Department of Defense and the Secretary of Defense concurred with the rule's requirements. Requirement 1 has, therefore, been satisfied. The rule became effective March 30, 2007, satisfying requirement 3. Regarding requirement 2, the statute of limitations for challenging the military readiness rule elapsed on June 28, 2007, and there were no challenges filed during the allotted 120-day time period. Therefore, the Service provides formal notice that the period of application for interim authority has expired.

Dated: May 17, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–13807 Filed 6–2–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY910000 L16100000 XX0000]

Notice of Public Meeting; Wyoming Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the Bureau of Land Management (BLM) Wyoming Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held on June 30, 2011, (3–5 p.m.) and July 1, 2011, (8 a.m.–3 p.m.).

ADDRESSES: The meeting will be in the Bureau of Land Management, Wyoming State Office, (First Floor Conference Room), 5353 Yellowstone, Cheyenne, Wyoming.

FOR FURTHER INFORMATON CONTACT: Cindy Wertz, Wyoming Resource Advisory Council Coordinator, Wyoming State Office, 5353 Yellowstone, Cheyenne, Wyoming, 82009, telephone 307–775–6014. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This 10-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Wyoming.

Planned agenda topics include a welcome and introduction of new Council members, election of officers, overview and procedures of resource advisory councils, issues and concerns in BLM Wyoming, and future project work for the RAC.

A half-hour public comment period, during which the public may address the Council, is scheduled to begin at 2:30 p.m. on July 1. All RAC meetings are open to the public. The public may present written comments to the RAC. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: May 26, 2011.

Donald A. Simpson,

State Director.

[FR Doc. 2011–13764 Filed 6–2–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO300000.L1430000]

Notice of Public Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) will hold two public meetings in connection with a proposed withdrawal published April 21, 2011, in the **Federal Register** [77 FR 22414]. The first meeting will be held Wednesday, July 6, 2011, from 6 p.m. to 8 p.m. at the BLM Southern Nevada District Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130. A second meeting will be held Thursday, July 7, 2011, from 6 p.m. to 8 p.m. at The Ambassador Hotel Victorville, 15494 Palmdale Road, Victorville, California 92392. The public will have an opportunity to provide oral and written comments at these meetings.

FOR FURTHER INFORMATION CONTACT: Linda Resseguie, BLM, by telephone at (202) 912–7337, or by e-mail at *linda_resseguie@blm.gov.*

Kim M. Berns,

Acting Assistant Director, Minerals and Realty Management, Bureau of Land Management.

[FR Doc. 2011–13775 Filed 6–2–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer Of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 18, 2010, AMPAC Fine Chemicals LLC., Highway 50 and Hazel Avenue, Building 05001, Rancho Cordova, California 95670, made application to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Thebaine (9333)	II
Poppy Straw Concentrate (9670)	II

The company is a contract manufacturer. In reference to Poppy Straw Concentrate the company will manufacture Thebaine intermediates for sale to its customers for further manufacture. No other activity for this drug code is authorized for registration.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than August 2, 2011.

Dated: May 25, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–13721 Filed 6–2–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Producer Price Index Survey

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, "Producer Price Index Survey," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before July 5, 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 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, Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Producer Price Index (PPI) is used as a measure of price movements, as an indicator of inflationary trends, for inventory valuation, and as a measure of purchasing power of the dollar at the primary market level. It also is used for market and economic research and as a basis for escalation in long-term contracts and purchase agreements. The purpose of the PPI collection is to accumulate data for the ongoing monthly publication of the PPI family of indexes.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0008. The current OMB approval is scheduled to expire on June 30, 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 February 22, 2011 (76 FR 9814).

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 1220–0008. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Bureau of Labor Statistics (BLS).

Title of Collection: Producer Price Index Survey.

OMB Control Number: 1220–0008.

Affected Public: Private Sector.

Total Estimated Number of Respondents: 32,832.

Total Estimated Number of Responses: 1,266,582.

Total Estimated Annual Burden Hours: 391,164.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 27, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–13780 Filed 6–2–11; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,216, TA–W–75,216A, TA–W–75,216B, TA–W–75,216C]

Russell Newman, Inc., a Subsdiary of RNA Holdings, LLC, Including On-Site Leased Workers From Hour Personnel Services, Pacesetter Ontract Staffing, and Staff Force, Inc., Denton, TX; RNA Holdings, LLC, New York Division, a Subsidiary of SE–RN Holdings, LLC, New York, NY; Russell Newman, Inc., a Subsidiary of RNA Holdings, LLC, Great Barrington, MA; RNA Holdings, LLC, a Subsidiary of SE–RN Holdings, LLC, San Rafael, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 3, 2011, applicable to workers of Russell Newman, Inc., a subsidiary of RNA Holdings, LLC including on-site leased workers from Hour Personnel Services, Pacesetter, Ontrack Staffing, and Staff Force, Inc., Denton, Texas. The notice was published in the **Federal Register** on March 17, 2011 (76 FR 14693).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to design, sourcing quality review and inspection, compliance, packaging, labeling, customer fulfillment, and distribution of women's and children's sleepwear services.

The Great Barrington, Massachusetts and San Rafael, California locations operated in conjunction with the Denton, Texas location, both were part of the overall servicing operation, served the same customer base and were impacted by the acquisition in services to China, Bangladesh, Pakistan and Korea.

Accordingly, the Department is amending this certification to include

workers of the Great Barrington, Massachusetts location of Russell Newman, Inc., subsidiary of RNA Holdings and the San Rafael, California location of RNA Holdings, LLC, a subsidiary of SE–RN Holdings, LLC.

The amended notice applicable to TA–W–75,216 is hereby issued as follows:

"All workers of Russell Newman, Inc., a subsidiary of RNA Holdings, LLC, including on-site leased workers from Hour Personnel Services, Pacesetter, Ontrack Staffing, and Staff Force, Inc., Denton, Texas (TA–W–75,216), RNA Holdings, LLC, New York Division, a subsidiary of SE–RN Holdings, LLC, New York, New York (TA–W–75,216A), Russell Newman, Inc., a subsidiary of RNA Holdings, LLC, Great Barrington, Massachusetts (TA–W–75,216B) and RNA Holdings, LLC, a subsidiary of SE–RN Holdings, LLC, San Rafael, California (TA–W–75,216C), who became totally or partially separated from employment on or after February 10, 2010, through March 3, 2013, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 25th day of May 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–13784 Filed 6–2–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,649; TA–W–74,649a]

DST Systems, Inc., Including On-Site Leased Workers From Comsys Information Technology Services, Megaforce, and Kelly Services Kansas City, MO; DST Technologies, a Wholly Owned Subsidiary of DST Systems, Inc., Boston, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor (Department) issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 5, 2010, applicable to workers of DST Systems, Inc., including on-site leased workers from Comsys Information Technology Services, Megaforce, and Kelly Services, Kansas City, Missouri (subject firm). The workers supply technical services, such as sophisticated information processing, computer software services, and business solutions, to the financial services, communications, and healthcare industries. The Department's Notice was published in the **Federal Register** on November 18, 2011 (76 FR 70701).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

DSI Technologies, a wholly owned subsidiary of DSI Systems, Inc., Boston, Massachusetts operated in conjunction with the Kansas City, Missouri location of DSI Systems, Inc.; both locations are part of an overall servicing operation, serve the same customer base, and are impacted by a shift in the supply of services abroad. Accordingly, the Department is amending this certification to include workers of DSI Technologies, Boston, Massachusetts.

The amended notice applicable to TA–W–74,649 is hereby issued as follows:

"All workers of DST Systems, Inc., including on-site leased workers from Comsys Information Technology Services, Megaforce, and Kelly Services, Kansas City, Missouri (TA–W–74,649) and DST Technologies, a wholly owned subsidiary of DST Systems, Inc., Boston, Massachusetts (TA–W–74,649A), who became totally or partially separated from employment on or after September 21, 2009, through November 5, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 24th day of May, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–13789 Filed 6–2–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,192; TA–W–75,192A]

Core Industries, Inc., DBA Star Trac and/or Unisen, Inc., DBA STAR TRAC and/or Trac Strength, Including On-Site Leased Workers From Aerotek, Helpmates, Mattson, and Empire Staffing, Irvine, CA; Core Industries, Inc., DBA Star Trac and/ar Unisen, Inc., DBA Star Trac and/or STAR Trac Strength, Including On-Site Leased Workers From Aerotek, Helpmates, Mattson, and Empire Staffing, Murrieta, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 15, 2011, applicable to workers of Core Industries, Inc., DBA Star Trac, Irvine, California. The workers produce commercial fitness equipment. The notice was published in the **Federal Register** on March 10, 2011 (75 FR 13230). The notice was amended on April 1, 2011 to include the Murrieta, California location of Core Industries, Inc., DBA Star Trac. The amended notice was published in the **Federal Register** on April 14, 2011 (76 FR 21033–21034).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows following a re-organization in November 2010, Core Industries, Inc., DBA Star Trac is also DBA Unisen, Inc. DBA Star Trac and/or Star Trac Strength. Some workers separated from employment at the Irvine, California and Murrieta, California locations of the subject firm had their wages reported under a separate unemployment insurance (UI) tax account under the name Unisen, Inc., DBA Star Trac and/or Star Trac Strength.

Accordingly, the Department is amending this certification to properly reflect the name of the subject firm in its entirety.

The amended notice applicable to TA–W–75,192 and TA–W–75,192A is hereby issued as follows:

All workers of Core Industries, Inc., DBA Star Trac, and/or Unisen, Inc., DBA Star Trac and/or Star Trac Strength, including on-site leased workers from Aerotek, Helpmates, Mattson, and Empire Staffing, Irvine, California (TA–W–75,192), and Core Industries, Inc., DBA Star Trac, and/or

Unisen, Inc., DBA Star Trac and/or Star Trac Strength, including on-site leased workers from Aerotek, Helpmates, Mattson, and Empire Staffing, Murrieta, California (TA–W–75,192A), who became totally or partially separated from employment on or after February 8, 2010, through February 15, 2013, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, D.C., this 25th day of May 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–13790 Filed 6–2–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of May 16, 2011 through May 20, 2011.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the Federal Register under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the Federal Register; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1- year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
75,260	Pittsburgh Corning Corporation, A Subsidiary of PPG, Inc. and Corning Inc., Glass Block Division.	Port Allegany, PA	February 19, 2011.
75,260A	Staffing Plus of Pennsylvania, Working On-Site at Pittsburgh Corning Corp., Glass Block Division.	Port Allegany, PA	February 10, 2011.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,984	Express Scripts, Authorization Department; Leased Workers from Kelly Services.	Bloomington, MN ..	December 10, 2009.
74,984A	Express Scripts, Information Technology Department; Leased Workers from Kelly Services.	Bloomington, MN ..	December 10, 2009.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
75,005	Manufacturers Industrial Group—Athens, LLC, UI Wages through Johnson Controls, Inc., On-site from Aerotek & Randstad.	Athens, TN	December 15, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
74,980	Storage Solutions, Also Known As Industrial Wire Products	Sullivan, MO.	
75,044	Hewlett Packard Company, MCBS Division (Formerly Enterprise Unix Division).	Fort Collins, CO.	
75,052	Siemen's Industry, Inc.	Columbus, OH.	
75,066	General Wholesale Building Supply Company, d/b/a Eastern Building Components, On-Site Workers of Holden Temporaries.	New Bern, NC.	
75,123	Smith Haist Dental Laboratory, Inc	Palm Harbor, FL.	
75,181	Sony Music Holdings Inc., D/B/A Sony DADC Americas ("SMHI"), Sony Corporation of America; Leased Workers from Employment Plus, etc.	Pitman, NJ.	
75,265	Domtar Paper Company, Inc	Langhorne, PA.	

I hereby certify that the aforementioned determinations were issued during the period of May 16, 2011 through May 20, 2011. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's website at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: May 26, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance .

[FR Doc. 2011–13786 Filed 6–2–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor

herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of May 16, 2011 through May 20, 2011.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.,* conditions within the industry are adverse).

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions. The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location
80,039	Michael Wrights Framing Concepts, Inc.	Kissimmee, FL.

I hereby certify that the aforementioned determinations were issued during the period of May 16, 2011 through May 20, 2011. Copies of these determinations may be requested under the Freedom of Information Act. Request may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://* www.doleta.gov/tradeact under the searchable listing of determinations.

Dated: May 26, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–13787 Filed 6–2–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 13, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 13, 2011.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov*.

Signed at Washington, DC, this 25th day of May 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 5/16/11 and 5/20/11]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
80181	L'Oreal, USA (Workers)	Clark, NJ	05/16/11	05/09/11
80182	Palmer Johnson Yachts, LLC (Company)	Sturgeon Bay, WI	05/16/11	05/04/11
80183	Century Furniture Casegoods (Company)	Hickory, NC	05/19/11	05/18/11
80184	Unigram (State/One-Stop)	Carson, CA	05/19/11	05/11/11
80185	Iron Mountain Information Management, Inc. (Company).	Boston, MA	05/19/11	05/17/11
80186	Colville Tribal Construction (State/One-Stop)	Nespelem, WA	05/19/11	05/18/11
80187	Bendonfield Management Services (Company).	Voorhees, NJ	05/20/11	04/18/11
80188	Berkline/Benchcraft, LLC (Company)	Morristown, TN	05/20/11	05/17/11
80189	Bristol Products Corporation (Company)	Bristol, TN	05/20/11	05/20/11
80190	Rankin Manufacturing, Inc. (Company)	New London, OH	05/20/11	05/20/11
80191	Tegrant Corporation (Company)	New Brighton, PA	05/20/11	05/19/11

[FR Doc. 2011–13785 Filed 6–2–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,364]

International Business Machines (IBM), Sales and Distribution Business Unit, Global Sales Solution Department, Division 91, Off-Site Teleworker in Armonk, NY; Notice of Negative Determination on Reconsideration

On April 6, 2011, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of International Business Machines (IBM), Sales and Distribution Business Unit, Global Sales Solution Department, off-site teleworker, Centerport, New York. The Department's Notice was published in the **Federal Register** on April 14, 2011 (76 FR 21033). The request for reconsideration alleges that IBM outsourced to India and China.

During the reconsideration investigation, it was revealed that the subject firm was mischaracterized. During the reconsideration investigation, the Department determined that the correct subject firm name and location is International Business Machines (IBM), Sales and Distribution Business Unit, Global Sales Solution Department, Division 91, off-site teleworker, Armonk, New York. The subject worker group supply computer software development and maintenance services to the Sales and Distribution Business Unit within IBM.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The initial negative determination was based on the findings that Section 222(a) and Section 222(c) of the Trade Act of 1974, as amended (the Act) have not been satisfied because fewer than three workers were totally or partially separated and further separations are not threatened. The investigation also revealed that the group eligibility requirements under Section 222(f) of the Act have not been satisfied because the workers' firm has not been identified by name in an affirmative finding of injury by the International Trade Commission.

29 CFR 90.2 states that a significant number or proportion of the workers means at least three (3) workers in a firm (or appropriate subdivision thereof) with a workforce of fewer than 50 workers, or five (5) percent of the workers or 50 workers, whichever is less, in a workforce of 50 or more workers.

A careful review of the administrative record and additional information obtained by the Department during the reconsideration investigation confirmed that the group eligibility requirements under Section 222(a) and (c) of the Act have not been met because fewer than three workers were totally or partially separated from IBM, Sales and Distribution Business Unit, Global Sales Solution Department, Division 91, or threatened with such separation. Moreover, new information obtained during the reconsideration investigation confirmed that only one person worked within Division 91 of the Sales and Distribution Department (working on-site at Armonk, New York or reporting remotely to Armonk, New York).

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of International Business Machines (IBM), Sales and Distribution Business Unit, Global Sales Solution Department,

Division 91, off-site teleworker, Armonk, New York.

Signed in Washington, DC, on this 23rd day of May, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–13788 Filed 6–2–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Employment and Training Administration Program Year (PY) 2011 Workforce Investment Act (WIA) Allotments to Outlying Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This Notice announces PY 2011 WIA Title I Youth, Adult and Dislocated Worker Activities program allotments for outlying areas. The WIA allotments for the outlying areas are based on a formula determined by the Secretary. As required by WIA section 182(d), on February 17, 2000, a Notice of the discretionary formula for allocating PY 2000 funds for the outlying areas (American Samoa, Guam, Marshall Islands, Micronesia, Northern Marianas, Palau, and the Virgin Islands) was published in the **Federal Register** at 65 FR 8236 (February 17, 2000). The rationale for the formula and methodology was fully explained in the February 17, 2000, **Federal Register** Notice. The formula for PY 2011 is the same as used for PY 2000 and is described in the section on Youth Activities program allotments. Comments are invited on the formula used to allot funds to the outlying areas.

DATES: Comments on the formula used to allot funds to the outlying areas must be received by July 5, 2011.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Financial and Administrative Management, 200 Constitution Ave., NW., Room N–4702, Washington, DC 20210, Attention: Mr. Kenneth Leung, Telephone: (202) 693–3471 (this is not a toll-free number). Fax: (202) 693–2859. E-mail: *Leung.Kenneth@dol.gov.*

FOR FURTHER INFORMATION CONTACT: WIA Youth Activities allotments—Evan Rosenberg at (202) 693–3593 or LaSharn Youngblood at (202) 693–3606; WIA Adult and Dislocated Worker Activities allotments—Mike Qualter at (202) 693–3014; Workforce Information Grant allotments—Anthony Dais at (202) 693–2784.

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) is announcing PY 2011 WIA Youth, Adult and Dislocated Worker program allotments to outlying areas. The allotments are based on the funds appropriated in the Full-Year Continuing Appropriations Act, 2011, Public Law 112–10, signed April 15, 2011. This appropriation requires an across-the-board rescission of 0.2 percent to all Federal Fiscal Year (FY) 2011 discretionary program funding. Included in this Notice are tables listing the PY 2011 allotments (including the 0.2 percent rescission) for programs under WIA Title I Youth Activities (Table A), Adult Activities (Table B) and Dislocated Worker Employment and Training Activities (Table C).

On December 17, 2003, Public Law 108–188, the Compact of Free Association Amendments Act of 2003 ("the Compact"), was signed. The Compact provided for consolidation of WIA Title I funding for the Marshall Islands and Micronesia into supplemental education grants provided from the Department of Education's appropriation. See 48 USC 1921d(f)(1)(B)(iii). The Compact also specified that the Republic of Palau remained eligible for WIA Title I funding. See 48 USC 1921d(f)(1)(B)(ix). The Consolidated Appropriations Act, 2010 (Pub. L. 111–117) (in the Department Of Education's General Provisions at Section 309, Title III, Division D) amended the Compact to extend the availability of WIA Title I funding to Palau through FY 2010. Section 1104 of the Full-Year Continuing Appropriations Act, 2011, further extended the same funding to Palau through FY 2011.

Youth Activities Allotments. PY 2011 Youth Activities funds for outlying areas total $2,064,785 (including the 0.2 percent rescission). Table A includes a breakdown of the Youth Activities program allotments for States (as previously shared) and each of the five outlying areas. Before determining the amount available for States, the total funding available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Youth Activities (after the 0.2 percent rescission).

The methodology for distributing funds to all outlying areas is not specified by WIA, but is at the Secretary's discretion. The methodology used is the same as used since PY 2000, i.e., funds are distributed among the remaining outlying areas by formula based on relative share of number of unemployed, a 90 percent hold-harmless of the prior year share, a $75,000 minimum, and a 130 percent stop-gain of the prior year share. As in PY 2010, data for the relative share calculation in the PY 2011 formula were from 2000 Census data for all outlying areas, obtained from the Bureau of the Census (Bureau) and are based on 2000 Census surveys for those areas conducted either by the Bureau or the outlying areas under the guidance of the Bureau.

Adult Employment and Training Activities Allotments. The total appropriated funds for PY 2011 for Adult Activities are $770,921,920 of which $1,927,305 is for outlying areas (including the 0.2 percent rescission). Table B includes a breakdown of the Adult Activities program allotments for States (as previously shared) and each of the five areas. Table B shows the PY 2011 Adult Employment and Training Activities allotments and comparison to PY 2010 allotments by State. Like the Youth Activities program, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Adult Activities (after the 0.2 percent rescission). As discussed in the Youth Activities paragraph, beginning in PY 2005, WIA funding for the Marshall Islands and Micronesia is no longer provided; instead, funding is provided in the Department of Education's appropriation. The Adult Activities funds for grants to the remaining outlying areas, for which the distribution methodology is at the Secretary's discretion, were distributed among the areas by the same principles, formula and data as used for outlying areas for Youth Activities.

Dislocated Worker Employment and Training Activities Allotments. Appropriated funds for PY 2011 for the Dislocated Worker Activities program total $1,287,544,000, with $3,218,860 for outlying areas (including the 0.2 percent rescission). Table C includes a breakdown of the Dislocated Worker program allotments for States (as previously shared) and each of the five outlying areas. The total appropriation includes formula funds for the States, National Reserve funds for the distribution of National Emergency Grants, technical assistance and training, demonstration projects, and the outlying areas' Dislocated Worker allotments. Like the Youth and Adult Activities programs, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Dislocated Worker

Activities (after the 0.2 percent rescission). WIA funding for the Marshall Islands and Micronesia is no longer provided, as discussed above. The Dislocated Worker Activities funds for grants to outlying areas, for which the distribution methodology is at the Secretary's discretion, were distributed among the remaining areas by the same pro rata share as the areas received for the PY 2011 WIA Adult Activities program, the same methodology used in PY 2010.

Signed: At Washington, DC on this 27th day of May, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Adminstration.

U.S. Department of Labor, Employment and Training Administration

TABLE A—WIA YOUTH ACTIVITIES STATE ALLOTMENTS

[Comparison of PY 2011 vs PY 2010]

State	PY 2010	PY 2011	Difference	Percent difference
Total	$924,069,000	$825,913,862	($98,155,138)	−10.62
Alabama	11,777,698	12,455,574	677,876	5.76
Alaska	2,755,418	2,216,462	(538,956)	−19.56
Arizona	15,982,731	15,326,190	(656,541)	−4.11
Arkansas	8,446,520	6,794,393	(1,652,127)	−19.56
California	136,875,948	117,952,080	(18,923,868)	−13.83
Colorado	11,132,070	9,788,025	(1,344,045)	−12.07
Connecticut	8,869,254	8,060,872	(808,382)	−9.11
Delaware	2,269,744	2,028,651	(241,093)	−10.62
District of Columbia	2,779,082	2,402,872	(376,210)	−13.54
Florida	43,352,872	50,372,277	7,019,405	16.19
Georgia	28,251,785	24,305,197	(3,946,588)	−13.97
Hawaii	2,690,193	2,272,811	(417,382)	−15.51
Idaho	2,950,667	3,428,419	477,752	16.19
Illinois	43,545,632	36,086,031	(7,459,601)	−17.13
Indiana	19,697,136	16,043,006	(3,654,130)	−18.55
Iowa	4,750,212	5,519,334	769,122	16.19
Kansas	5,930,458	5,248,975	(681,483)	−11.49
Kentucky	14,303,105	12,514,937	(1,788,168)	−12.50
Louisiana	14,009,636	11,269,372	(2,740,264)	−19.56
Maine	3,476,520	2,887,584	(588,936)	−16.94
Maryland	11,311,383	10,073,999	(1,237,384)	−10.94
Massachusetts	17,387,925	15,988,686	(1,399,239)	−8.05
Michigan	51,768,509	41,642,666	(10,125,843)	−19.56
Minnesota	14,264,509	11,474,392	(2,790,117)	−19.56
Mississippi	13,081,892	10,523,093	(2,558,799)	−19.56
Missouri	17,781,382	14,549,044	(3,232,338)	−18.18
Montana	2,344,418	2,174,750	(169,668)	−7.24
Nebraska	2,518,508	2,288,141	(230,367)	−9.15
Nevada	7,654,897	8,303,837	648,940	8.48
New Hampshire	2,269,744	2,253,475	(16,269)	−0.72
New Jersey	20,938,294	20,362,826	(575,468)	−2.75
New Mexico	4,365,301	4,775,669	410,368	9.40
New York	51,835,670	46,253,787	(5,581,883)	−10.77
North Carolina	25,351,154	24,598,968	(752,186)	−2.97
North Dakota	2,269,744	2,028,651	(241,093)	−10.62
Ohio	39,313,893	31,915,350	(7,398,543)	−18.82
Oklahoma	6,970,582	6,877,913	(92,669)	−1.33
Oregon	13,707,810	11,026,583	(2,681,227)	−19.56
Pennsylvania	31,871,328	29,506,561	(2,364,767)	−7.42
Puerto Rico	29,722,110	23,908,509	(5,813,601)	−19.56
Rhode Island	4,531,698	3,767,218	(764,480)	−16.87
South Carolina	17,299,897	13,916,063	(3,383,834)	−19.56
South Dakota	2,269,744	2,028,651	(241,093)	−10.62
Tennessee	18,716,506	16,288,215	(2,428,291)	−12.97
Texas	57,404,782	52,833,195	(4,571,587)	−7.96
Utah	3,547,273	4,121,624	574,351	16.19
Vermont	2,269,744	2,028,651	(241,093)	−10.62
Virginia	13,127,843	13,540,444	412,601	3.14
Washington	17,997,280	15,992,583	(2,004,697)	−11.14
West Virginia	3,924,261	4,315,932	391,671	9.98
Wisconsin	13,963,286	13,099,180	(864,106)	−6.19
Wyoming	2,269,744	2,028,651	(241,093)	−10.62
State Total	907,897,792	811,460,369	(96,437,423)	−10.62
American Samoa	131,813	117,342	(14,471)	−10.98
Guam	1,072,924	955,133	(117,791)	−10.98
Northern Marianas	397,035	353,447	(43,588)	−10.98
Palau	75,000	75,000	0	0.00
Virgin Islands	633,401	563,863	(69,538)	−10.98

TABLE A—WIA YOUTH ACTIVITIES STATE ALLOTMENTS—Continued

[Comparison of PY 2011 vs PY 2010]

State	PY 2010	PY 2011	Difference	Percent difference
Outlying Areas Total	2,310,173	2,064,785	(245,388)	−10.62
Native Americans	13,861,035	12,388,708	(1,472,327)	−10.62

U.S. Department of Labor, Employment and Training Administration

TABLE B—WIA ADULT ACTIVITIES STATE ALLOTMENTS

[Comparison of PY 2011 vs PY 2010]

State	PY 2010 (Pre-FY 2011 0.2% Rescission)	PY 2011	Difference	Percent difference
Total	$861,540,000	$770,921,920	($90,618,080)	−10.52
Alabama	11,546,269	12,090,307	544,038	4.71
Alaska	2,630,761	2,118,648	(512,113)	−19.47
Arizona	15,227,363	14,638,503	(588,860)	−3.87
Arkansas	7,946,421	6,399,544	(1,546,877)	−19.47
California	131,676,574	113,937,862	(17,738,712)	−13.47
Colorado	10,028,610	8,838,405	(1,190,205)	−11.87
Connecticut	7,899,746	7,208,528	(691,218)	−8.75
Delaware	2,148,465	1,922,487	(225,978)	−10.52
District of Columbia	2,416,917	2,040,921	(375,996)	−15.56
Florida	44,003,639	50,666,671	6,663,032	15.14
Georgia	26,468,737	22,840,137	(3,628,600)	−13.71
Hawaii	2,786,714	2,375,218	(411,496)	−14.77
Idaho	2,793,005	3,112,389	319,384	11.44
Illinois	40,399,352	33,485,477	(6,913,875)	−17.11
Indiana	17,396,927	14,120,139	(3,276,788)	−18.84
Iowa	3,329,069	3,872,586	543,517	16.33
Kansas	4,907,309	4,349,496	(557,813)	−11.37
Kentucky	14,765,556	12,990,026	(1,775,530)	−12.02
Louisiana	13,633,150	10,979,275	(2,653,875)	−19.47
Maine	3,276,134	2,730,113	(546,021)	−16.67
Maryland	10,691,615	9,553,233	(1,138,382)	−10.65
Massachusetts	15,779,759	14,398,404	(1,381,355)	−8.75
Michigan	48,336,592	38,927,229	(9,409,363)	−19.47
Minnesota	12,498,015	10,065,109	(2,432,906)	−19.47
Mississippi	12,175,592	9,805,450	(2,370,142)	−19.47
Missouri	16,419,448	13,419,717	(2,999,731)	−18.27
Montana	2,281,343	2,120,862	(160,481)	−7.03
Nebraska	2,148,465	1,922,487	(225,978)	−10.52
Nevada	7,675,248	8,185,256	510,008	6.64
New Hampshire	2,148,465	1,922,487	(225,978)	−10.52
New Jersey	20,803,661	20,215,513	(588,148)	−2.83
New Mexico	4,166,386	4,573,434	407,048	9.77
New York	51,297,403	45,933,685	(5,363,718)	−10.46
North Carolina	23,389,183	22,906,147	(483,036)	−2.07
North Dakota	2,148,465	1,922,487	(225,978)	−10.52
Ohio	36,633,264	29,608,861	(7,024,403)	−19.17
Oklahoma	6,516,603	6,455,261	(61,342)	−0.94
Oregon	12,848,682	10,347,514	(2,501,168)	−19.47
Pennsylvania	29,034,229	26,995,920	(2,038,309)	−7.02
Puerto Rico	31,530,340	25,392,538	(6,137,802)	−19.47
Rhode Island	3,919,536	3,245,983	(673,553)	−17.18
South Carolina	16,317,914	13,141,414	(3,176,500)	−19.47
South Dakota	2,148,465	1,922,487	(225,978)	−10.52
Tennessee	18,105,616	15,820,576	(2,285,040)	−12.62
Texas	53,798,899	49,503,599	(4,295,300)	−7.98
Utah	2,816,695	3,276,560	459,865	16.33
Vermont	2,148,465	1,922,487	(225,978)	−10.52
Virginia	11,828,202	12,422,005	593,803	5.02
Washington	16,563,114	14,762,815	(1,800,299)	−10.87
West Virginia	4,058,158	4,403,989	345,831	8.52
Wisconsin	11,729,145	11,261,887	(467,258)	−3.98
Wyoming	2,148,465	1,922,487	(225,978)	−10.52
State Total	859,386,150	768,994,615	(90,391,535)	−10.52

TABLE B—WIA ADULT ACTIVITIES STATE ALLOTMENTS—Continued

[Comparison of PY 2011 vs PY 2010]

State	PY 2010 (Pre-FY 2011 0.2% Rescission)	PY 2011	Difference	Percent difference
American Samoa	122,595	109,235	(13,360)	−10.90
Guam	997,885	889,140	(108,745)	−10.90
Northern Marianas	369,268	329,026	(40,242)	−10.90
Palau	75,000	75,000	0	0.00
Virgin Islands	589,102	524,904	(64,198)	−10.90
Outlying Areas Total	2,153,850	1,927,305	(226,545)	−10.52

TABLE C—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION WIA DISLOCATED WORKER ACTIVITIES STATE ALLOTMENTS

[Comparison of PY 2011 vs PY 2010]

State	PY 2010 (Pre-FY 2011 0.2% Rescission)	PY 2011	Difference	Percent difference
Total	$1,413,000,000	$1,287,544,000	($125,456,000)	−8.88
Alabama	17,669,335	16,128,630	(1,540,705)	−8.72
Alaska	2,187,095	1,804,590	(382,505)	−17.49
Arizona	22,788,184	21,992,101	(796,083)	−3.49
Arkansas	6,867,051	6,535,066	(331,985)	−4.83
California	192,413,016	170,303,818	(22,109,198)	−11.49
Colorado	14,509,305	13,969,269	(540,036)	−3.72
Connecticut	11,850,579	12,117,862	267,283	2.26
Delaware	2,778,921	2,526,887	(252,034)	−9.07
District of Columbia	2,990,511	2,592,780	(397,731)	−13.30
Florida	83,019,633	81,270,552	(1,749,081)	−2.11
Georgia	40,912,792	35,502,366	(5,410,426)	−13.22
Hawaii	3,268,124	2,539,205	(728,919)	−22.30
Idaho	4,536,856	4,240,518	(296,338)	−6.53
Illinois	54,673,396	52,391,500	(2,281,896)	−4.17
Indiana	27,257,656	22,971,198	(4,286,458)	−15.73
Iowa	5,888,367	6,222,410	334,043	5.67
Kansas	6,855,442	5,780,312	(1,075,130)	−15.68
Kentucky	18,089,024	14,985,351	(3,103,673)	−17.16
Louisiana	9,812,674	8,768,499	(1,044,175)	−10.64
Maine	4,578,544	3,599,239	(979,305)	−21.39
Maryland	15,543,289	14,302,198	(1,241,091)	−7.98
Massachusetts	22,706,846	21,065,395	(1,641,451)	−7.23
Michigan	64,544,036	51,285,260	(13,258,776)	−20.54
Minnesota	18,020,939	12,889,304	(5,131,635)	−28.48
Mississippi	9,867,047	10,150,118	283,071	2.87
Missouri	22,223,344	19,187,040	(3,036,304)	−13.66
Montana	2,174,950	2,047,301	(127,649)	−5.87
Nebraska	2,428,300	2,059,689	(368,611)	−15.18
Nevada	14,124,712	14,332,064	207,352	1.47
New Hampshire	3,181,956	2,764,686	(417,270)	−13.11
New Jersey	33,365,324	32,250,359	(1,114,965)	−3.34
New Mexico	4,093,214	5,179,814	1,086,600	26.55
New York	65,534,311	55,889,913	(9,644,398)	−14.72
North Carolina	44,039,515	35,096,512	(8,943,003)	−20.31
North Dakota	690,086	499,920	(190,166)	−27.56
Ohio	51,610,221	44,079,882	(7,530,339)	−14.59
Oklahoma	6,905,534	6,917,377	11,843	0.17
Oregon	20,167,658	15,077,317	(5,090,341)	−25.24
Pennsylvania	39,561,993	37,972,551	(1,589,442)	−4.02
Puerto Rico	17,054,847	13,696,022	(3,358,825)	−19.69
Rhode Island	6,227,600	5,104,108	(1,123,492)	−18.04
South Carolina	23,089,893	19,186,456	(3,903,437)	−16.91
South Dakota	1,000,388	840,914	(159,474)	−15.94
Tennessee	26,930,077	22,128,000	(4,802,077)	−17.83
Texas	61,378,563	62,020,936	642,373	1.05
Utah	4,625,970	6,063,094	1,437,124	31.07
Vermont	1,787,950	1,243,942	(544,008)	−30.43
Virginia	18,472,220	18,481,552	9,332	0.05
Washington	24,271,171	22,272,901	(1,998,270)	−8.23
West Virginia	4,551,211	4,558,971	7,760	0.17

TABLE C—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION WIA DISLOCATED WORKER ACTIVITIES STATE ALLOTMENTS—Continued

[Comparison of PY 2011 vs PY 2010]

State	PY 2010 (Pre-FY 2011 0.2% Rescission)	PY 2011	Difference	Percent difference
Wisconsin	19,934,322	17,345,523	(2,588,799)	−12.99
Wyoming	786,008	1,201,048	415,040	52.80
State Total	1,183,840,000	1,063,432,320	(120,407,680)	−10.17
American Samoa	201,066	182,437	(18,629)	−9.27
Guam	1,636,618	1,484,984	(151,634)	−9.27
Northern Marianas	605,632	549,518	(56,114)	−9.27
Palau	123,006	125,260	2,254	1.83
Virgin Islands	966,178	876,661	(89,517)	−9.27
Outlying Areas Total	3,532,500	3,218,860	(313,640)	−8.88
National Reserve	225,627,500	220,892,820	(4,734,680)	−2.10

[FR Doc. 2011–13806 Filed 6–2–11; 8:45 am]

BILLING CODE 4510–FN–P

MERIT SYSTEMS PROTECTION BOARD

[MSPB Docket Numbers SF–3330–09–0570–B–1 and SF–3330–09–0725–B–1.]

Merit Systems Protection Board (MSPB or Board) Provides Notice of Opportunity To File Amicus Briefs in the Matter of Michael B. Graves v. Department of Veterans Affairs

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: In *Graves* v. *Department of Veterans Affairs,* 114 M.S.P.R. 245 (2010), and *Graves* v. *Department of Veterans Affairs,* 114 M.S.P.R. 209 (2010), which involved appeals filed under the Veterans Employment Opportunities Act of 1998 (VEOA), the Board held that the agency's use of veterans' preference status as a "tie-breaker" in making selections for excepted service "hybrid" positions under 38 U.S.C. 7401(3), which includes the Medical Records Technician (MRT) positions at issue in these cases, was inadequate, and that the agency must comply with the competitive service veterans' preference requirements set forth in title 5 of the United States Code. The Board reasoned that although title 5 provisions such as those relating to veterans' preference rights do not apply to appointments listed under 38 U.S.C. 7401(1) (physicians, dentists, etc.) because those appointments are made "without regard to civil-service requirements," "hybrid" employees retain many title 5 rights, including the adverse action and reduction in force (RIF) rights mentioned in 38 U.S.C. 7403(f)(3). The Board noted that section 7403(f)(2) provides that "[i]n using such authority to appoint individuals to such positions, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5," and that section 7403(f)(3) provides that "the applicability of the principles of preference referred to in paragraph (2) * * * shall be resolved under the provisions of title 5 as though such individuals had been appointed under that title." Based on its reading of these two provisions, the Board concluded that title 5 competitive service veterans' preference requirements apply to appointments made to 38 U.S.C. 7401(3) positions such as MRTs. The Board also suggested in *Graves,* 114 M.S.P.R. 209, ¶¶ 12–15, that the agency violated veterans' preference requirements set forth in the Office of Personnel Management's Delegated Examining Operations Handbook and VetGuide, and that corrective action was therefore warranted.

The *Graves* cases are now before the Board on petition for review after remand. The agency has raised several arguments regarding the above findings. The agency asserts that 38 U.S.C. 7403(f)(3) does not address the appointment of individuals because its plain language refers multiple times to individuals who have already been appointed. Thus, the agency contends that the Board's decisions do not give effect to the word "appointed" in section 7403(f)(3), and under the statutory construction maxim *noscitur a sociis* (a word is defined by the company it keeps), the reference in section 7403(f)(3) to "matters relating to * * * the applicability of the principles of preference referred to in paragraph (2)" should mean matters relating to veterans' preference principles that apply to individuals who have already been appointed, like "matters relating to" adverse actions, RIFs, part-time employees, disciplinary actions, and grievance procedures. The agency also contends that the legislative history for 5 U.S.C. 7403(f)(2)–(3) indicates that a Senate committee specifically intended for the agency to apply a tie-breaker principle to "hybrid" applicants, and that Congress did not intend to require the agency to apply title 5 rights to applicants for employment. The agency further asserts that in 1984 it provided notice in the **Federal Register** that it would be implementing the "principles of preference" requirement in the statute through an internal circular that called for the use of the "tie-breaker" principle that has been in effect from 1984 through the Board's decisions in *Graves.*

We also note that while section 7403(f)(2) calls for applying "the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5," such application appears to relate to the use of "such authority," *i.e.,* the "authority" mentioned in 38 U.S.C. 7403(a), which in turn calls for appointments to be made "without regard to civil-service requirements." *See Scarnati* v. *Department of Veterans Affairs,* 344 F.3d 1246, 1248 (Fed. Cir. 2003) (under 38 U.S.C. 7403(a), title 5 provisions, including those regarding veterans' preference rights, do not apply to appointments made "without regard to civil service requirements"). Further, deference is generally given to an agency's consistent, long-standing regulatory interpretation of an ambiguous statute as long as it is reasonable, *Rosete* v. *Office of Personnel Management,* 48 F.3d 514, 518–19 (Fed. Cir. 1995), and Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt

that interpretation when it adopts a new law incorporating sections of a prior law without change, *Fitzgerald* v. *Department of Defense,* 80 M.S.P.R. 1, 14 (1998).

The *Graves* cases thus present the following legal issues: (1) Does 38 U.S.C. 7403(f)(2) require the agency to apply title 5 veterans' preference provisions, including but not limited to 5 U.S.C. 3305(b) and 5 CFR 332.311(a), which the Board found the agency violated in not accepting the appellant's late-filed application, *see Graves,* 114 M.S.P.R. 245, ¶¶ 12–15, in filling "hybrid" positions under 38 U.S.C. 7401(3); (2) does the legislative history for the applicable statutory provisions offer guidance regarding how those provisions should be interpreted; (3) are the Delegated Examining Operations Handbook and VetGuide "statute[s] or regulation[s]" relating to veterans' preference within the meaning of 5 U.S.C. 3330a(a)(1)(A), such that a violation of a provision in those documents would constitute a violation under VEOA; (4) does the law of the case doctrine apply to the Board's rulings in these cases; and (5) if so, is there a basis for finding that the "clearly erroneous" exception to that doctrine has been met? In addition, we note that the resolution of the above issues may affect whether the Board has jurisdiction over VEOA appeals filed by "hybrid" applicants.

Interested parties may submit amicus briefs or other comments on these issues no later than June 30, 2011. Amicus briefs must be filed with the Clerk of the Board. Briefs shall not exceed 30 pages in length. The text shall be double-spaced, except for quotations and footnotes, and the briefs shall be on 8½ by 11 inch paper with one inch margins on all four sides.

DATES: All briefs submitted in response to this notice shall be filed with the Clerk of the Board on or before June 30, 2011.

ADDRESSES: All briefs shall be captioned "*Michael B. Graves* v. *Department of Veterans Affairs*" and entitled "Amicus Brief." Only one copy of the brief need be submitted. Briefs must be filed with the Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Matthew Shannon, Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; *mspb@mspb.gov.*

William D. Spencer,

Clerk of the Board.

[FR Doc. 2011–13737 Filed 6–2–11; 8:45 am]

BILLING CODE 7400–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369, 50–370, 50–413, and 50–414; NRC–2011–0127]

Duke Energy Carolinas, LLC; Notice of Withdrawal of Application for Amendments to Renewed Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission, NRC) has granted the request of Duke Energy Carolinas, LLC (the licensee) to withdraw its June 29, 2010, application for proposed amendments to Renewed Facility Operating License Nos. NPF–9 and NPF–17 for the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina, and for proposed amendments to Renewed Facility Operating License Nos. NPF–35 and NPF–52 for the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendment would have revised Technical Specification (TS) 3.3.1, "Reactor Trip System (RTS) Instrumentation" and TS 3.3.2, "Engineered Safety Feature Actuation System (ESFAS) Instrumentation."

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 25, 2011 (76 FR 4384). However, by letter dated April 12, 2011, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 29, 2010, and the licensee's letter dated April 12, 2011, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are available online in the NRC library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to the Agencywide Documents Access and Management System (ADAMS) or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 26th day of May 2011.

For the Nuclear Regulatory Commission.

Jon Thompson,

Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–13809 Filed 6–2–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 50–302; NRC–2009–0039]

Florida Power Corporation, Crystal River Unit 3 Nuclear Generating Plant; Notice of Availability of Draft Supplement 44 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants and Public Meetings for the License Renewal of Crystal River Unit 3 Nuclear Generating Plant

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published a draft plant-specific supplement to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG–1437, regarding the renewal of operating license DPR–72 for an additional 20 years of operation for Crystal River Unit 3 Nuclear Generating Plant. Crystal River Unit 3 Nuclear Generating Plant is located in Crystal River, Florida, approximately 80 miles north of Tampa, Florida. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be considered, comments on the draft supplement to the GEIS and the proposed action must be received by July 25, 2011. The NRC staff is able to ensure consideration only for comments received on or before this date.

Addresses: Please include Docket ID NRC–2009–0039 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for

submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and, therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0039. Address questions about NRC dockets to Carol Gallagher at 301–492–3668 or by e-mail at *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax comments to: RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov.* The Accession Number for draft Supplement 44 to the GEIS is ML11139A153.

Federal rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching for Docket ID NRC–2009–0039.

In addition, a copy of the draft supplement to the GEIS is available to local residents near the site at the Central Ridge Library located at 425 West Roosevelt Boulevard, Beverly Hills, Florida 34465, and at the Coastal Region Library located at 8619 West Crystal Street, Crystal River, Florida 34428.

All comments received by the NRC, including those made by Federal, State, and local agencies; Native American Tribes; or other interested persons, will be made available electronically at the NRC's PDR in Rockville, Maryland, and through ADAMS. Comments received after the due date will be considered only if it is practical to do so.

The NRC staff will hold public meetings prior to the close of the public comment period to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. Two meetings will be held at the Plantation Inn, 9301 W. Fort Island Trl, Crystal River, FL 34429, on Tuesday, June 28, 2011. The first session will convene at 2 p.m. and will continue until 5 p.m., as necessary. The second session will convene at 7 p.m. and will continue until 10 p.m., as necessary. The meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Daniel Doyle, the NRC Environmental Project Manager, at 1–800–368–5642, extension 3748, or by e-mail at *Daniel.Doyle@nrc.gov* no later than Thursday, June 23, 2011. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Doyle's attention no later than Thursday, June 23, 2011, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

For Further Information Contact: Mr. Daniel Doyle, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Mr. Doyle may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 26th day of May 2011.

For the Nuclear Regulatory Commission.

David J. Wrona,

Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–13817 Filed 6–2–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341; NRC–2010–0099]

Detroit Edison Company, Fermi 2; Exemption

1.0 Background

Detroit Edison Company (the licensee) is the holder of Facility Operating License No. NPF–43, which authorizes operation of Fermi 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of one boiling-water reactor located in Monroe County, Michigan.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009 (74 FR 13926), establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from two of these additional requirements that Fermi 2 now seeks an exemption from the implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by May 31, 2011.

By letter dated November 19, 2009 (Agencywide Documents Access and

Management System (ADAMS) Accession No. ML093270067), as supplemented by letter dated December 23, 2009 (ADAMS Accession No. ML100040010), the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's November 19, 2009, and December 23, 2009, letters, have certain portions which contain proprietary and safeguards information and, accordingly, are not available to the public. The licensee requested an exemption from the March 31, 2010, compliance date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. By letter dated March 19, 2010 (ADAMS Accession No. ML100350225), the NRC granted an exemption request to extend the compliance date for five requirements to May 31, 2011, versus the March 31, 2010, deadline. Being granted this exemption for the five requirements allowed the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet or exceed the noted regulatory requirements. By letter dated March 23, 2011 (ADAMS Accession No. ML111290414), the licensee has now requested an additional exemption from the current implementation date of May 31, 2011 to August 31, 2011 for two of these requirements, due to site-specific weather conditions, causing unanticipated delays in construction schedule.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as "security plans." Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of exemption, as noted above, would allow an extension from May 31, 2011, to August 31, 2011, for the implementation date for two specified areas of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR part 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final power reactor security rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that any such changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter, from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute (ADAMS Accession No. ML091410309)). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

Fermi 2 Schedule Exemption Request

The licensee provided detailed information in its letter dated March 23, 2011 (ADAMS Accession No. ML110840250), requesting an exemption. It describes a comprehensive plan which provides a timeline for achieving full compliance with the new regulation. Enclosure 1 contains security related information regarding the site security plan, status of security modifications, details of the specific requirements of the regulation for which the site cannot be in compliance by the May 31, 2011, deadline and why, the required changes to the site's security configuration, and a timeline with "critical path" activities that will enable the licensee to achieve full compliance by August 31, 2011. The timeline provides dates indicating when (1) Construction began or will begin on various phases of the project (*i.e.,* new equipment, buildings and fences), and (2) critical equipment will be installed, tested and become operational.

Notwithstanding the schedule exemptions of these limited requirements, the licensee indicated that it will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By August 31, 2011, the licensee also stated that Fermi 2 will be in full compliance with the regulatory requirements of 10 CFR 73.55, as published on March 27, 2009 (76 FR 13926).

4.0 Environmental Consideration

This exemption authorizes a scheduler exemption to the compliance date identified in 10 CFR 73.55(a)(1) for Fermi 2. The NRC staff previously prepared a Programmatic Environmental Assessment and Finding of No Significant Impact (76 FR 187) for the treatment of licensee exemption requests from the implementation date requirement of 10 CFR 73.55. Consistent with the referenced analysis, the NRC staff has determined that the licensee's request constitutes an administrative (timing) change that would not have a significant effect on the quality of the human environment.

5.0 Conclusion for Part 73 Schedule Exemption Request

The NRC staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to August 31, 2011, with regard to two specified remaining requirements of 10 CFR 73.55. This conclusion is based on the staff's determination that Fermi 2 has made a good faith effort to meet the requirements in a timely manner, has sufficiently described the reasons for the unanticipated delays, and has provided an updated detailed schedule with adequate justification for the additional time requested for the extension, based on those delays and the original scope of work, that staff agrees is needed to ensure that the required system capabilities are met.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or

the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption. The NRC staff has determined that the long-term benefits that will be realized when the Fermi 2 modifications are completed justifies exceeding the full compliance date in the case of this particular licensee. The security measures Fermi 2 needs additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those currently required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the May 31, 2011, deadline for the two remaining requirements specified in Enclosure 1 of the Detroit Edison letter dated March 23, 2011, the licensee is required to be in full compliance by August 31, 2011. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of May, 2011.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–13808 Filed 6–2–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting on the ACRS Subcommittee on Power Uprates

Notice of Meeting

The ACRS Subcommittee on Power Uprates will hold a meeting on June 7, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance except for a portion that may be closed to protect proprietary information provided by General Electric Hitachi (GEH) pursuant to 5 U.S.C. 552b(C)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, June 7, 2011—8:30 a.m. until 5 p.m.

The Subcommittee will review the staff's evaluation of Topical Report NEDC–33173, Supplement 2, Parts 1, 2, and 3 (Applicability of GE Methods to Expanded Operating Domains-Power Distribution Validation and Pin-by-Pin Gamma Scan). The Subcommittee will hear presentations by and hold discussions with the NRC staff, GE Hitachi, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mrs. Zena Abdullahi (Telephone 301–415–8716 or E-mail: *Zena.Abdullahi@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Ms. Jessie Delgado (Telephone 301–415–7360) to be escorted to the meeting room.

Dated: May 27, 2011.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–13795 Filed 6–2–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Digital Instrumentation and Control Systems; Notice of Meeting

The ACRS Subcommittee on Digital Instrumentation and Control Systems (DI&C) will hold a meeting on June 7, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, June 7, 2011–8:30 a.m. until 5 p.m.

The Subcommittee will hear a briefing on the Brookhaven National Laboratory's DI&C Probabilistic Risk Assessment (PRA) software work. The Subcommittee will hear presentations by and hold discussions with the Office of Nuclear Regulatory Research (RES) staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mrs. Christina Antonescu (Telephone 301–415–6792 or E-mail: *Christina.Antonescu@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings

were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Ms. Jessie Delgado (Telephone 301–415–7360) to be escorted to the meeting room.

Dated: May 27, 2011.

Yoira Diaz-Sanabria,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–13796 Filed 6–2–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on June 6, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Monday, June 6, 2011–2 p.m. until 3 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee. Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mrs. Ilka Berrios (Telephone 301–415–3179 or E-mail: *Ilka.Berrios@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Ms. Jessie Delgado (Telephone 301–415–7360) to be escorted to the meeting room.

Dated: May 26, 2011.

Yoira Diaz-Sanabria,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–13803 Filed 6–2–11; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Civil Service Retirement System; Present Value Factors

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of adjusted present value factors applicable to retirees under the Civil Service Retirement System (CSRS) who elect to provide survivor annuity benefits to a spouse based on post-retirement marriage and to retiring employees who elect the alternative form of annuity, owe certain redeposits based on refunds of contributions for service before March 1, 1991, or elect to credit certain service with nonappropriated fund instrumentalities. This notice is necessary to conform the present value factors to changes in the economic assumptions adopted by the Board of Actuaries of the Civil Service Retirement System.

DATES: *Effective Date:* The revised present value factors apply to survivor reductions or employee annuities that commence on or after October 1, 2011.

ADDRESSES: Send requests for actuarial assumptions and data to the Board of Actuaries, care of Gregory Kissel, Actuary, Office of Planning and Policy Analysis, Office of Personnel Management, Room 4307, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Kristine Prentice, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Several provisions of CSRS require reduction of annuities on an actuarial basis. Under each of these provisions, OPM is required to issue regulations on the method of determining the reduction to ensure that the present value of the reduced annuity plus a lump-sum equals, to the extent practicable, the present value of the unreduced benefit. The regulations for each of these benefits provide that OPM will publish a notice in the **Federal Register** whenever it changes the factors used to compute the present values of these benefits.

Section 831.2205(a) of title 5, Code of Federal Regulations, prescribes the method for computing the reduction in the beginning rate of annuity payable to a retiree who elects an alternative form of annuity under 5 U.S.C. 8343a. That reduction is required to produce an annuity that is the actuarial equivalent of the annuity of a retiree who does not elect an alternative form of annuity. The present value factors listed below are used to compute the annuity reduction under section 831.2205(a) of title 5, Code of Federal Regulations.

Section 831.303(c) of title 5, Code of Federal Regulations, prescribes the use of these factors for computing the reduction to complete payment of certain redeposits of refunded deductions based on periods of service that ended before March 1, 1991, under section 8334(d)(2) of title 5, United

States Code; section 1902 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111–84.

Section 831.663 of Title 5, Code of Federal Regulations, prescribes the use of similar factors for computing the reduction required for certain elections to provide survivor annuity benefits based on a post-retirement marriage under section 8339(j)(5)(C) or (k)(2) of title 5, United States Code. Under section 11004 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, effective October 1, 1993, OPM ceased collection of these survivor election deposits by means of either a lump-sum payment or installments. Instead, OPM is required to establish a permanent actuarial reduction in the annuity of the retiree. This means that OPM must take the amount of the deposit computed under the old law and translate it into a lifetime reduction in the retiree's benefit. The reduction is based on actuarial tables, similar to those used for alternative forms of annuity under section 8343a of title 5, United States Code.

Subpart F of part 847 of title 5, Code of Federal Regulations, prescribes the use of similar factors for computing the deficiency the retiree must pay to receive credit for certain service with nonappropriated fund instrumentalities made creditable by an election under section 1043 of Public Law 104–106.

The present value factors currently in effect were published by OPM (75 FR 35093) on June 21, 2010. Elsewhere in today's **Federal Register**, OPM published a notice to revise the normal cost percentage under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99–335, based on changed economic assumptions adopted by the Board of Actuaries of the CSRS. Those changes require corresponding changes in CSRS normal costs and present value factors used to produce actuarially equivalent benefits when required by the Civil Service Retirement Act. The revised factors will become effective on October 1, 2011, to correspond with the changes in CSRS normal cost percentages. For alternative forms of annuity and redeposits of employee contributions, the new factors will apply to annuities that commence on or after October 1, 2011. See 5 CFR 831.2205 and 831.303(c). For survivor election deposits, the new factors will apply to survivor reductions that commence on or after October 1, 2010. See 5 CFR 831.663(c) and (d). For obtaining credit for service with certain nonappropriated fund instrumentalities, the new factors will apply to cases in which the date of computation under section 847.603 of title 5, Code of Federal Regulations, is on or after October 1, 2011. See 5 CFR 847.602(c) and 847.603.

OPM is, therefore, revising the tables of present value factors to read as follows:

CSRS Present Value Factors Applicable to Annuity Payable Following an Election Under Section 8339(j) or (k) or Section 8343a of Title 5, United States Code, or Under Section 1043 of Public Law 104–106 or Following a Redeposit Under Section 8334(d)(2) of Title 5, United States Code

Age	Present value factor
40	288.1
41	285.0
42	281.9
43	278.6
44	275.1
45	271.6
46	267.9
47	264.2
48	260.3
49	256.8
50	253.1
51	248.9
52	244.7
53	240.3
54	235.5
55	230.7
56	225.7
57	220.4
58	215.2
59	209.9
60	204.6
61	199.0
62	193.3
63	187.7
64	182.0
65	176.2
66	170.5
67	164.6
68	158.9
69	153.2
70	147.5
71	141.7
72	135.7
73	129.9
74	124.0
75	118.1
76	112.2
77	106.6
78	101.2
79	95.9
80	89.9
81	84.2
82	79.2
83	74.4
84	69.7
85	64.8
86	60.3
87	56.1
88	51.8
89	47.6
90	44.3

CSRS Present Value Factors Applicable to Annuity Payable Following an Election Under Section 1043 of Public Law 104–106 (For Ages at Calculation Below 40)

Age at calculation	Present value of a monthly annuity
17	339.0
18	337.5
19	335.9
20	334.2
21	332.5
22	330.8
23	329.0
24	327.1
25	325.2
26	323.2
27	321.1
28	319.0
29	316.9
30	314.6
31	312.4
32	310.0
33	307.6
34	305.0
35	302.4
36	299.8
37	297.0
38	294.2
39	291.2

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–13708 Filed 6–2–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees' Retirement System; Normal Cost Percentages

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of revised normal cost percentages for employees covered by the Federal Employees' Retirement System (FERS) Act of 1986.

DATES: The revised normal cost percentages are effective at the beginning of the first pay period commencing on or after October 1, 2011. Agency appeals of the normal cost percentages must be filed no later than December 5, 2011.

ADDRESSES: Send or deliver agency appeals of the normal cost percentages and requests for actuarial assumptions and data to the Board of Actuaries, care of Gregory Kissel, Actuary, Office of

Planning and Policy Analysis, Office of Personnel Management, Room 4307, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Kristine Prentice or Roxann Johnson, (202) 606–0299.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Public Law 99–335, created a new retirement system intended to cover most Federal employees hired after 1983. Most Federal employees hired before 1984 are under the older Civil Service Retirement System (CSRS). Section 8423 of title 5, United States Code, as added by the FERS Act of 1986, provides for the payment of the Government's share of the cost of the retirement system under FERS. Employees' contributions are established by law and constitute only a small fraction of the cost of funding the retirement system; employing agencies are required to pay the remaining costs. The amount of funding required, known as "normal cost," is the entry age normal cost of the provisions of FERS that relate to the Civil Service Retirement and Disability Fund (Fund). The normal cost must be computed by OPM in accordance with generally accepted actuarial practices and standards (using dynamic assumptions). Subpart D of part 841 of title 5, Code of Federal Regulations, regulates how normal costs are determined.

In its meeting on June 11, 2010, the Board of Actuaries of the Civil Service Retirement System (the Board) recommended changes to the economic assumptions used in the dynamic actuarial valuations of FERS. The Board reviewed statistical data prepared by the OPM actuaries and considered trends that may affect future experience under the System. OPM has adopted the Board's recommendations.

Based on its analysis, the Board concluded that it would be appropriate to assume a rate of investment return of 5.75 percent, reduced from the existing rate of 6.25 percent. In addition, the Board determined that the assumed inflation rate should be reduced from 3.50 percent to 3.00 percent and that the projected rate of General Schedule salary increases should be reduced from 4.25 percent to 3.75 percent. These salary increases are in addition to assumed within-grade increases that reflect past experience. Each of these assumptions is 0.50 percent lower than the economic assumptions previously in place. The Board's recommendation adjusts the nominal rates to balance long-term expectations with recent experience and better aligns the assumptions with those used by the federal retirement programs administered by the U.S. Department of Defense and the Social Security Administration. The economic assumptions anticipate that, over the long term, the annual rate of investment return will exceed inflation by 2.75 percent and General Schedule salary increases will exceed long-term inflation by 0.75 percent a year, with no difference from the current assumptions. In 2008, the Board adopted changes in the mortality assumptions established in 2006 as well as changes in all the demographic assumptions listed as factors under section 841.404(a) of title 5, Code of Federal Regulations. These assumptions remain unchanged.

The normal cost calculations depend on economic, demographic, and mortality assumptions. The demographic assumptions are determined separately for each of a number of special groups, in cases where separate experience data is available. Based on the current demographic assumptions, and the changed economic assumptions described above, OPM has determined the normal cost percentage for each category of employees under section 841.403 of title 5, Code of Federal Regulations. The Governmentwide normal cost percentages, including the employee contributions, are as follows:

Members—19.6%;

Congressional employees—18.0%;

Law enforcement officers, members of the Supreme Court Police, firefighters, nuclear materials couriers, Customs and Border Protection Officers, and employees under section 302 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees—27.6%;

Air traffic controllers—27.3%;

Military reserve technicians—15.7%;

Employees under section 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (when serving abroad)—18.0%; and

All other employees—12.7%.

Under section 841.408 of title 5, Code of Federal Regulations, these normal cost percentages are effective at the beginning of the first pay period commencing on or after October 1, 2011.

The time limit and address for filing agency appeals under sections 841.409 through 841.412 of title 5, Code of Federal Regulations, are stated in the **DATES** and **ADDRESSES** sections of this notice.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–13709 Filed 6–2–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees' Retirement System; Present Value Factors

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of adjusted present value factors applicable to retirees who elect to provide survivor annuity benefits to a spouse based on post-retirement marriage, and to retiring employees who elect the alternative form of annuity or elect to credit certain service with nonappropriated fund instrumentalities. This notice is necessary to conform the present value factors to changes in the economic assumptions adopted by the Board of Actuaries of the Civil Service Retirement System.

DATES: The revised present value factors apply to survivor reductions or employee annuities that commence on or after October 1, 2011.

ADDRESSES: Send requests for actuarial assumptions and data to the Board of Actuaries, care of Gregory Kissel, Actuary, Office of Planning and Policy Analysis, Office of Personnel Management, Room 4307, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Kristine Prentice, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Several provisions of the Federal Employees' Retirement System (FERS) require reduction of annuities on an actuarial basis. Under each of these provisions, OPM is required to issue regulations on the method of determining the reduction to ensure that the present value of the reduced annuity plus a lump-sum equals, to the extent practicable, the present value of the unreduced benefit. The regulations for each of these benefits provide that OPM will publish a notice in the **Federal Register** whenever it changes the factors used to compute the present values of these benefits.

Section 842.706(a) of title 5, Code of Federal Regulations, prescribes the method for computing the reduction in the beginning rate of annuity payable to a retiree who elects an alternative form of annuity under 5 U.S.C. 8420a. That

reduction is required to produce an annuity that is the actuarial equivalent of the annuity of a retiree who does not elect an alternative form of annuity. The present value factors listed below are used to compute the annuity reduction under 5 CFR 842.706(a).

Section 842.615 of title 5, Code of Federal Regulations, prescribes the use of these factors for computing the reduction required for certain elections to provide survivor annuity benefits based on a post-retirement marriage or divorce under 5 U.S.C. 8416(b), 8416(c), or 8417(b). Under section 11004 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, 107 Stat. 312, effective October 1, 1993, OPM ceased collection of these survivor election deposits by means of either a lump-sum payment or installments. Instead, OPM is required to establish a permanent actuarial reduction in the annuity of the retiree. This means that OPM must take the amount of the deposit computed under the old law and translate it into a lifetime reduction in the retiree's benefit. The reduction is based on actuarial tables, similar to those used for alternative forms of annuity under section 8420a of title 5, United States Code.

Subpart F of part 847 of title 5, Code of Federal Regulations, prescribes the use of present value factors for computing the deficiency the retiree must pay to receive credit for certain service with nonappropriated fund instrumentalities made creditable by an election under section 1043 of Public Law 104–106, 110 Stat. 186.

OPM published the present value factors currently in effect on June 21, 2010, at 75 FR 35096. Elsewhere in today's **Federal Register**, OPM published a notice to revise the normal cost percentage under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99–335, 100 Stat. 514, based on changed economic assumptions adopted by the Board of Actuaries of the Civil Service Retirement System. Under 5 U.S.C. 8461(i), those changes require corresponding changes in the present value factors used to produce actuarially equivalent benefits when required by the FERS Act. The revised factors will become effective on October 1, 2011, to correspond with the changes in FERS normal cost percentages. For alternative forms of annuity, the new factors will apply to annuities that commence on or after October 1, 2011. See 5 CFR 842.706. For survivor election deposits, the new factors will apply to survivor reductions that commence on or after October 1, 2011. See 5 CFR 842.615(b). For obtaining credit for service with certain nonappropriated fund instrumentalities, the new factors will apply to cases in which the date of computation under 5 CFR 847.603 is on or after October 1, 2011. See 5 CFR 847.602(c) and 847.603.

OPM is, therefore, revising the tables of present value factors to read as follows:

TABLE I—FERS PRESENT VALUE FACTORS FOR AGES 62 AND OLDER

[Applicable to annuity payable following an election under 5 U.S.C. 8416(b), 8416(c), 8417(b), or 8420a, or under section 1043 of Pub. L. 104–106]

Age	Present value factor
62	183.8
63	178.9
64	174.0
65	169.0
66	163.9
67	158.8
68	153.6
69	148.5
70	143.1
71	137.6
72	132.2
73	126.9
74	121.5
75	116.0
76	110.3
77	104.9
78	99.7
79	94.2
80	88.4
81	82.7
82	77.4
83	72.5
84	67.8
85	63.2
86	58.6
87	54.2
88	50.1
89	46.7
90	44.2

TABLE II.A—FERS PRESENT VALUE FACTORS FOR AGES 40 THROUGH 61

[Applicable to annuity payable when annuity is not increased by cost-of-living adjustments before age 62 following an election under 5 U.S.C. 8416(b), 8416(c), 8417(b), or 8420a, or under section 1043 of Pub. L. 104–106]

Age	Present value factor
40	195.8
41	196.2
42	196.2
43	195.9
44	195.4
45	194.9
46	194.4
47	194.0
48	193.5
49	192.9
50	192.5
51	192.1

TABLE II.A—FERS PRESENT VALUE FACTORS FOR AGES 40 THROUGH 61—Continued

[Applicable to annuity payable when annuity is not increased by cost-of-living adjustments before age 62 following an election under 5 U.S.C. 8416(b), 8416(c), 8417(b), or 8420a, or under section 1043 of Pub. L. 104–106]

Age	Present value factor
52	191.6
53	191.2
54	190.6
55	190.0
56	189.4
57	188.8
58	188.3
59	187.7
60	187.1
61	186.6

TABLE II.B—FERS PRESENT VALUE FACTORS FOR AGES 40 THROUGH 61

[Applicable to annuity payable when annuity is increased by cost-of-living adjustments before age 62 following an election under 5 U.S.C. 8416(b), 8416(c), 8417(b), or 8420a, or under section 1043 of Pub. L. 104–106]

Age	Present value factor
40	261.5
41	260.1
42	258.0
43	255.5
44	252.6
45	249.5
46	246.3
47	243.3
48	240.1
49	236.7
50	233.4
51	230.0
52	226.5
53	222.8
54	218.9
55	215.0
56	210.9
57	206.6
58	202.3
59	197.9
60	193.3
61	188.6

TABLE III—FERS PRESENT VALUE FACTORS FOR AGES AT CALCULATION BELOW 40

[Applicable to annuity payable following an election under section 1043 of Pub. L. 104–106]

Age at calculation	Present value of a monthly annuity
17	298.9
18	297.9
19	296.7
20	295.6
21	294.4
22	293.2

TABLE III—FERS PRESENT VALUE FACTORS FOR AGES AT CALCULATION BELOW 40—Continued

[Applicable to annuity payable following an election under section 1043 of Pub. L. 104–106]

Age at calculation	Present value of a monthly annuity
23	291.9
24	290.5
25	289.2
26	287.8
27	286.3
28	284.8
29	283.2
30	281.6
31	279.9
32	278.1
33	276.3
34	274.4
35	272.4
36	270.4
37	268.3
38	266.1
39	263.8

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–13707 Filed 6–2–11; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29684]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

May 27, 2011.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of May 2011. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 21, 2011, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

For Further Information Contact: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–8010.

Dreyfus Institutional Money Market Fund, Inc. [File No. 811–3025]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 31, 2009, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $2,700 incurred in connection with the liquidation were paid by The Dreyfus Corporation, applicant's investment adviser.

Filing Dates: The application was filed on April 6, 2011, and amended on May 9, 2011.

Applicant's Address: c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

Morgan Stanley High Yield Securities Inc. [File No. 811–2932]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 1, 2010, applicant transferred its assets to Invesco High Yield Securities Fund, a series of AIM Investment Securities Funds, based on net asset value. Expenses of approximately $297,718 incurred in connection with the reorganization were paid by Morgan Stanley Investment Advisors Inc., applicant's investment adviser, and Invesco Advisers, Inc.

Filing Dates: The application was filed on March 4, 2011, and amended on May 5, 2011.

Applicant's Address: c/o Morgan Stanley Investment Advisors Inc., 522 Fifth Ave., New York, NY 10036.

Advantage Advisers Augusta Fund, L.L.C. [File No. 811–7641]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 2, 2011, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $113,933 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on May 17, 2011.

Applicant's Address: c/o Oppenheimer & Co., Inc., 200 Park Ave., 24th Floor, New York, NY 10116.

Blue Chip Value Fund, Inc. [File No. 811–5003]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 28, 2011, applicant transferred its assets to Westcore Blue Chip Fund, a series of Westcore Trust, based on net asset value. Expenses of $555,705 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on April 25, 2011.

Applicant's Address: 1225 17th St., 26th Floor, Denver, CO 80202.

Lord Abbett Managed Portfolio Solutions Trust [File No. 811–22117]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on April 29, 2011.

Applicant's Address: 90 Hudson St., Jersey City, NJ 07302.

BlackRock Senior Floating Rate Fund, Inc. [File No. 811–5870]; BlackRock Senior Floating Rate Fund II, Inc. [File No. 811–9229]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 21, 2011, each applicant transferred its assets to BlackRock Floating Rate Income Portfolio, a series of BlackRock Funds II, based on net asset value. Expenses of approximately $270,300 and $232,841, respectively, incurred in connection with the reorganizations were paid by each applicant.

Filing Date: The applications were filed on April 26, 2011.

Applicants' Address: 100 Bellevue Parkway, Wilmington, DE 19809.

Russell ETF Trust [File No. 811–22401]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on April 5, 2011, and amended on May 25, 2011.

Applicant's Address: 1301 Second Ave., 18th Floor, Seattle, WA 98101.

Premier VIT [File No. 811–8512]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On or about April 27, 2010, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $81,000 incurred in connection with the liquidation were paid by applicant and Allianz Global Investors Fund Management LLC, applicant's investment adviser.

Filing Date: The application was filed on August 12, 2010, and amended on May 10, 2011.

Applicant's Address: 1345 Avenue of the Americas, New York, New York 10105.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13751 Filed 6–2–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Uniontown Energy, Inc.; Order of Suspension of Trading

June 1, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Uniontown Energy, Inc. because of questions regarding the accuracy of assertions by the company, and by others, including in press releases to investors concerning, among other things: the acquisition and exploration of oil properties.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on June 1, 2011 through 11:59 p.m. EDT, on June 14, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–13880 Filed 6–1–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64560; File No. SR–FINRA–2011–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Rule Cross-References and Make Non-Substantive Technical Changes to Certain FINRA Rules

May 27, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2011, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to update cross-references within certain FINRA rules to reflect changes adopted in the consolidated FINRA rulebook and to make non-substantive technical changes to certain FINRA Rules.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is in the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook").[4] That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook.

The proposed rule change would update rule cross-references to reflect changes adopted in the Consolidated FINRA Rulebook. In this regard, the proposed rule change would update references in FINRA Rules 0150 (Application of Rules to Exempted Securities Except Municipal Securities), 6630 (Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities), 7230A (Trade Report Input), 7330 (Trade Report Input) and 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d–1(c)(2)) that are needed as the result of Commission approval of two recent FINRA proposed rule changes.[5] Furthermore, the proposed rule change would update a reference in FINRA Rule 9120 (Definitions) to reflect that the NASD Rule 3300 Series has been replaced by FINRA Rule 4560 and the FINRA Rule 5200 Series.[6] The proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See* Securities Exchange Act Release No. 63150 (October 21, 2010), 75 FR 66173 (October 27, 2010) (Order Approving File No. SR–FINRA–2009–058); and Securities Exchange Act Release No. 63260 (November 5, 2010), 75 FR 69508 (November 12, 2010) (Order Approving File No. SR–FINRA–2010–034).

[6] *See* Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (Order Approving File No. SR–FINRA–2008–033); Securities Exchange Act Release No. 60648 (September 10, 2009), 74 FR 47837 (September 17, 2009) (Order Approving File No. SR–FINRA–2009–048); Securities Exchange Act Release No. 60659

rule change would also make a technical change to FINRA Rule 4530 (Reporting Requirements) to clarify in Supplementary Material .03 that the proper referenced term is "Order Accepting an Offer of Settlement." The proposed rule change would also make a technical change to FINRA Rule 6622 (Transaction Reporting) by moving the word "and" from subparagraph (c)(3) to subparagraph (c)(4). Additionally, the proposed rule change would correct the numbering of Incorporated NYSE Rule Interpretation 409 (Statements of Accounts to Customers) due to an inadvertent deletion.[7]

FINRA also is proposing to move the definition of "initial public offering" from Rule 6220 (Definitions) to Rule 6130 (Transactions Related to Initial Public Offerings). FINRA is not proposing substantive changes to the definition of "initial public offering." FINRA believes that Rule 6130 is the more appropriate location for the definition of "initial public offering" and that relocating this definition, as proposed, will reduce confusion for members.

Finally, FINRA is proposing a change to FINRA Rule 2268(a)(5)[8] to reflect amendments to the Code of Arbitration Procedure for Customer Disputes allowing customers to choose an all public arbitration panel.[9]

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule changes to FINRA Rules 6130, 6220, 6622, 6630, 7230A, 7330 and 9120 will be June 17, 2011. The implementation date for the proposed rule changes to FINRA Rules 0150, 4530 and 9217 will be July 1, 2011. The implementation date for the proposed rule change to FINRA Rule 2268 will be December 5, 2011. The implementation date for the proposed rule change to Incorporated NYSE Rule Interpretation 409 will be the effective date of SR–FINRA–2010–061.[10]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

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–FINRA–2011–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–024. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–024 and

(September 11, 2009), 74 FR 48117 (September 21, 2009) (Order Approving File No. SR–FINRA–2009–044); Securities Exchange Act Release No. 60835 (October 16, 2009), 74 FR 54616 (October 22, 2009) (Order Approving File No. SR–FINRA–2009–055); Securities Exchange Act Release No. 61071 (November 30, 2009), 74 FR 64109 (December 7, 2009) (Order Approving File No. SR–FINRA–2009–067); and Securities Exchange Act Release No. 62842 (September 3, 2010), 75 FR 55842 (September 14, 2010) (Order Approving File No. SR–FINRA–2010–030). When SR–FINRA–2010–030 became effective, the last remaining provision of the NASD Rule 3300 Series was deleted, thereby necessitating the proposed rule change to FINRA Rule 9120.

[7] *See* Securities Exchange Act Release No. 63999 (March 1, 2011), 76 FR 12380 (March 7, 2011) (Order Approving File No. SR–FINRA–2010–061).

[8] FINRA Rule 2268 was adopted as part of the consolidated FINRA rules governing books and records. *See Regulatory Notice* 11–19 (April 2011). FINRA Rule 2268 will become effective on December 5, 2011.

[9] *See* Securities Exchange Act Release No. 63799 (January 31, 2011), 76 FR 6500 (February 4, 2011) (Order Approving File No. SR–FINRA–2010–053).

[10] *See* Securities Exchange Act Release No. 63999 (March 1, 2011), 76 FR 12380 (March 7, 2011) (Order Approving File No. SR–FINRA–2010–061).

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

should be submitted on or before June 24, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13738 Filed 6–2–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64561; File No. SR–NYSE–2011–15]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change To Modify the Initial Trading Market Value for Debt Securities

I. Introduction

On April 1, 2011, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the initial trading market value requirements for certain debt securities. The proposed rule change was published in the **Federal Register** on April 14, 2011.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange's proposal would amend NYSE Rule 1401 to modify the initial trading market value requirement for "Debt Securities" from $10,000,000 to $5,000,000. The term "Debt Securities" includes any unlisted note, bond, debenture or evidence of indebtedness that is: (1) Statutorily exempt from the registration requirements of Section 12(b) of the Act, or (2) eligible to be traded under a Commission exemptive order. NYSE Rules 1400 and 1401 set forth requirements for trading Debt Securities.

Currently, NYSE Rule 1401 requires that Debt Securities traded on the NYSE have an outstanding aggregate market value or principal amount of no less than $10,000,000 on the date that trading commences. In the Notice, the Exchange cited a number of corporate retail note programs offered by issuers whose equity securities are listed on the Exchange that involve issuances of $5,000,000 or more but less than $10,000,000 in principal. The Exchange proposed to reduce the required initial outstanding aggregate market value to $5,000,000 in order to be able to list such securities. The Exchange believes that expanding the number of Debt Securities that could be traded on the Exchange's platform would offer investors greater transparency and choice with respect to secondary market trading in such securities.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act [4] and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal is reasonably designed to expand exchange trading for debt securities with a smaller initial float, and thereby to increase transparency and price competition for investors.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–2011–15) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Dated: May 27, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13755 Filed 6–2–11; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64287 (April 8, 2011), 76 FR 21086 ("Notice").

[4] 15 U.S.C. 78f.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 17 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64564; File No. SR–MSRB–2011–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend Rule G–23, on Activities of Financial Advisors

May 27, 2011

On February 9, 2011, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend MSRB Rule G–23, on activities of financial advisors. The Commission published the proposed rule change for comment in the **Federal Register** on February 28, 2011 (the "Commission Notice").[3] The Commission received eighteen comment letters.[4] On May 27,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63946 (February 22, 2011), 76 FR 10926.

[4] *See* letter from F. John White, Chief Executive Officer, Public Financial Management, Inc., dated February 25, 2011 ("PFM Letter"); e-mail to Mary N. Simpkins, Senior Special Counsel, Commission, from Patricia Bowen, Vice President, Eastern Bank, dated March 2, 2011 ("Eastern Bank Letter"); letter from Robert W. Doty, President, American Governmental Financial Services, dated March 10, 2011 ("AGFS Letter"); letter from Hill A. Feinberg, Chairman and CEO, First Southwest Company, dated March 16, 2011 ("First Southwest Letter"); letter from Carl Giles, dated March 16, 2011 ("Giles Letter"); letter from Keith Kolb, Managing Director, Director of Baird Public Finance, Robert W. Baird & Co. Incorporated, dated March 18, 2011 ("Baird Letter"); letter from Joy A. Howard, Principal, WM Financial Strategies, dated March 18, 2011 ("Joy Howard Letter"); letter from Christopher Hamel, Head of Municipal Finance, RBC Capital Markets, LLC, dated March 21, 2011 ("RBC Letter"): letter from Nathan R. Howard, Municipal Advisor, WM Financial Strategies, dated March 21, 2011 ("Nathan Howard Letter"); letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated March 21, 2011 ("BDA Letter"); e-mail from David A. Wagner, Senior Vice President and Financial Advisor, Ehlers Associates, Inc., dated March 21, 2011 ("Ehlers Letter"); letter from Colette J. Irwin-Knott, President, National Association of Independent Public Finance Advisors, dated March 21, 2011 ("NAIPFA Letter"); letter from Steve Apfelbacher, President, Ehlers Associates, Inc., dated March 21, 2011 ("Apfelbacher Letter"): letter from Leslie M. Norwood, Managing Director and Associate General Counsel, The Securities Industry and Financial Markets Association, dated March 21, 2011 ("SIFMA Letter"); letter from Larry Kidwell, President, Kidwell & Company Inc., dated March 21, 2011 ("Kidwell Letter"); e-mail from Robert J. Stracks, Counsel, BMO Capital Markets GKST Inc., dated March 22, 2011 ("BMO Letter"); letter from Susan Gaffney, Director, Federal Liaison Center,

2011, the MSRB filed an amendment ("Amendment No. 1") to the proposed rule change.[5] The Commission is publishing this notice and order to solicit comments on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1.

I. Description of Proposed Rule Change and Summary of Comments

As described in the Commission Notice, the MSRB is proposing to amend its Rule G–23, on activities of financial advisors. Proposed Rule G–23 would, subject to limited exceptions, (i) prohibit a dealer financial advisor with respect to the issuance of municipal securities from acquiring all or any portion of such issue directly or indirectly, from the issuer as principal, or acting as agent for the issuer in arranging the placement of such issue, either alone or as a participant in a syndicate or other similar account formed for that purpose; (ii) apply the same prohibition to any dealer controlling, controlled by, or under common control with the dealer financial advisor; and (iii) prohibit a dealer financial advisor from acting as the remarketing agent for such issue. In addition, the proposed interpretive guidance, as amended, would provide guidance on when a dealer that renders advice would be considered to be "acting as an underwriter" rather than as a financial advisor for purposes of proposed Rule G–23.

The proposed rule change resulted from a concern that a dealer financial advisor's ability to underwrite the same issue of municipal securities, on which it acted as financial advisor, presented a conflict that is too significant for the existing disclosure and consent provisions of Rule G–23 to cure. Even in the case of a competitive underwriting, the perception on the part of issuers and investors that such a conflict might exist was sufficient to cause concern that permitting such role switching was not consistent with "a free and open market in municipal securities," which the Board is mandated to perfect.[6] Of the eighteen comment letters received on the proposed rule change,[7] eleven commenters expressed some support for the proposed rule change, including the general principle that prompted the proposed rule change, but these commenters also suggested certain changes to or exemptions from the proposed rule change.[8] Seven commenters objected to all or part of the proposed rule change.[9]

The MSRB's responses to comments and changes to the proposed rule change made by Amendment No. 1 are described below.

A. Scope of "Acting as an Underwriter" and Rule G–23(b)

Several commenters stated that the proposed rule change would preserve the general confusion between the role of a financial advisor and the role of an underwriter and preserve historically abusive market practices.[10] One commenter expressed concern that the exemption for underwriters under the proposed interpretive guidance is inconsistent with the underwriter exemption provided under the Dodd-Frank Act and the Commission's proposed rules,[11] and would help underwriters evade fiduciary duties.[12] Another commenter stated that the proposed rule change: (i) Undermines the will of the Exchange Act to adhere to clear lines between interests that are public and interests that are private; (ii) perpetuates a culture of conflict that the Exchange Act intended to eliminate; (iii) creates loopholes for bank/broker dealers to continue to serve in multiple roles and represent conflicting interests in transactions; (iv) avoids the intent of the Exchange Act to impose fiduciary duties on municipal advisors who are bank/broker dealers; (v) creates confusion and perplexity as opposed to clarity and precision as a baseline for interpretation of the rules; (vi) invites opportunity for continued abuses of municipal issuers; and (vii) conflicts with the stated mission of the MSRB to protect the interests of issuers, investors, and the public trust, and not those of the bank/broker dealer community.[13]

Another commenter stated that it has asked the MSRB, on various occasions, to consider whether it is appropriate for a broker-dealer to provide the kind of advice that financial advisors typically provide.[14] This commenter stated that the MSRB has failed to recognize the distinction between providing advice and acting as an underwriter, and objected to the exemption from the definition of municipal advisor for underwriters that render "advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning the issuance of municipal securities."[15]

Other commenters expressed concern that the lack of distinction between the "advice" provided by municipal advisors and the "advice" provided by underwriters will reduce market transparency and the distinction between the roles, and as such will confuse market participants, including small infrequent municipal issuers.[16] Specifically, one commenter stated that because the proposed rule change uses the term "advice" to describe both the actions of financial advisors and underwriters, market participants will be confused as to the type of services that may be provided.[17] This commenter suggested using the term "recommendation or guidance" in the context of municipal advisors, and the term "information" in the context of underwriters.[18]

Several commenters suggested enhanced disclosure by dealers who act as underwriters. According to one commenter, with regard to negotiated sales, dealers, in their course of engagement as underwriters, typically provide input regarding matters related to the structure, timing, and terms of the

Government Finance Officers Association, dated March 21, 2011 ("GFOA Letter"); letter from Thomas M. DeMars, Managing Principal, Fieldman, Rolapp & Associates, dated March 23, 2011 ("Fieldman Letter").

[5] Amendment No. 1 partially amends the text of the original proposed interpretive notice to: (i) Clarify that Rule G–23 is solely a conflicts rule; (ii) eliminate the rebuttable presumption that a dealer providing certain advice is a financial advisor; (iii) emphasize that Rule G–23(b) does not require a writing in order for a financial advisory relationship to exist; (iv) provide additional clarity as to when a dealer will be deemed to be "acting as an underwriter" and not as a financial advisor for purposes of Rule G–23(b); and (v) provide guidance on certain activities (in addition to underwriting activities) in which a dealer may engage without violating Rule G–23(d).

[6] *See* Commission Notice, *supra* note 3 at 10927.

[7] *See supra* note 4.

[8] *See* PFM Letter, AGFS Letter, First Southwest Letter, Joy Howard Letter, Nathan Howard Letter, Ehlers Letter, NAIPFA Letter, Apfelbacher Letter, Kidwell Letter, GFOA Letter and Fieldman Letter.

[9] *See* Eastern Bank Letter, Giles Letter, Baird Letter, RBC Letter, BDA Letter, SIFMA Letter and BMO Letter.

[10] *See* Joy Howard Letter at 1–2. *See also* Kidwell Letter at 2–3 and Nathan Howard Letter at 1. One commenter expressed the belief that the current financial crisis was caused in part by the acts of financial advisors who engaged in conflicts of interest that were either undisclosed, or disclosed and misunderstood, by debt issuers, borrowers, and investors. *See id.* at 2.

[11] *See* Exchange Act Release No. 63576 (December 20, 2010), 76 FR 824 (January 6, 2011) ("Municipal Advisor Registration Proposing Release").

[12] *See* PFM Letter at 2–4.

[13] *See* Kidwell Letter at 4. This commenter stated that state and local governments and their instrumentalities should be held to a different and higher standard than individuals or corporations because the risk associated with loss due to a conflict of interest is of public monies, where the officials responsible for the allowance of the conflict bear no personal financial responsibility in association with such actions. *See id.* at 3.

[14] *See* NAIPFA Letter at 1.

[15] *Id.* at 2.

[16] *See* Joy Howard Letter at 8 and Nathan Howard Letter at 1.

[17] *See* Nathan Howard Letter at 1.

[18] *See id.* at 1–4.

bonds.[19] The commenter stated its belief that this input should not be substituted for advice the issuer receives from a financial advisor.[20] This commenter also suggested that when the issuer is represented by a financial advisor, this underwriter input should not be seen as violating the intent of Rule G–23.[21] However, when the issuer is not so represented, such input provided by the underwriter becomes the issuer's sole source of financial advice, and this may cause the underwriter to be the *de facto* financial advisor to the issuer.[22] The commenter suggested that the latter relationship should be prohibited by Rule G–23.[23] As such, this commenter suggested that the proposed interpretive guidance should at least require the underwriter to disclose that it is not serving as the issuer's financial advisor, and has no fiduciary obligation to act in the best interest of the issuer.[24] This commenter further stated that "[i]ssuers need to clearly understand that their underwriter is not their financial advisor and that they are not discouraged from hiring a financial advisor because of a loophole in the proposed Guidance that suggests the underwriter can perform both roles."[25]

Another commenter stated that if the Commission adopts the expansive view of what constitutes "acting as an underwriter" as proposed by the MSRB, the underwriters acting as financial advisors should be required to decide the role they wish to play before they talk with the issuer and affirmatively disclose the conflicts inherent in their underwriting role to the issuer, if that is the role they decide to pursue.[26] Further, this commenter stated that any contract that the underwriter had for acting as an advisor for an issuer must be terminated when the firm is hired or seeks to be hired as an underwriter to the issuer, or in any other role that is inconsistent with the role of a fiduciary.[27] Another commenter stated that a firm should disclose in writing, prior to beginning any work for a municipal issuer, whether it will be working as a broker-dealer or as a municipal advisor so as to allow a municipality to make an informed decision to use a broker-dealer instead of a municipal advisor.[28]

Another commenter generally expressed support for the proposed rule change and the proposed interpretive guidance.[29] With respect to the proposed interpretive guidance, the commenter pointed out that it is possible that a dealer may make representations or engage in conduct at the outset of a relationship that leads a municipal entity to believe that the dealer, even though labeled as "underwriter," is providing advice in the municipal entity's best interests.[30] Moreover, the commenter stated that the "advice" offered to a municipal entity may have other functions than being offered in an issuer's best interests.[31] Further, this commenter pointed out that even if a direct explicit representation is not made, there are a variety of methods to lead a municipal entity to believe that an underwriter's advice places the entity's interests first.[32] In addition, this commenter expressed skepticism that merely informing an issuer that a dealer will be an underwriter is sufficient to "whitewash the dealer's advice to the issuer" because many issuers do not know the difference between an underwriter and a financial advisor.[33] As such, this commenter suggested that the dealer be required to inform the issuer that the advice is not offered in a fiduciary capacity, with an explanation of what that means.[34] Lastly, this commenter suggested that dealers serving as underwriters should engage in discussions with issuers underscoring the non-fiduciary character of the relationship and state in bond purchase agreements atypical facts and circumstances in which underwriters do assume fiduciary roles.[35]

On a similar note, five commenters[36] suggested amending or deleting paragraph (b) of Rule G–23 in order to reduce confusion about the scope of the role of an underwriter and the role of a financial advisor. One of these commenters stated that under the Exchange Act, an individual acts as a municipal advisor if it provides "advice with respect to the structure, timing, terms and other similar matters concerning such financial products or issues," and a "broker, dealer, or municipal securities dealer serving as an underwriter" is excluded from the definition of a municipal advisor.[37] This commenter then pointed out that "[t]he definition of 'underwriter' under Section 2(a)(11) of the Securities Act of 1933 does not include 'a person that provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues.'"[38] As such, the commenter stated that proposed Rule G–23 confuses the distinction between municipal advisors and underwriters, thereby making the market less transparent and more susceptible to conflicts of interest and abuse and that proposed Rule G–23 would be less ambiguous if paragraph (b) was deleted in its entirety.[39] Another commenter suggested that the last sentence of paragraph (b) of proposed Rule G–23 be revised to read: "Notwithstanding the foregoing, for purposes of this rule, a financial advisory relationship shall not be deemed to exist when, in the course of acting as an underwriter, a broker, dealer or municipal securities dealer provides information to an issuer relating to the sale of the securities to investors such as transactional structures, the underwriter's capabilities to sell various securities, how particular terms of a security structure may affect rates and yields, and matters incidental to the underwriting of a new issue of municipal securities."[40]

In response, in Amendment No. 1, the MSRB stated that, in order for a dealer to be considered to be acting as an underwriter under Rule G–23(b), it must clearly identify itself, in writing, as an underwriter and not as a financial advisor from the earliest stages of the

[19] *See* GFOA Letter at 2.

[20] *See id.*

[21] *See id.*.

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] *Id.*

[26] *See* NAIPFA Letter at 7–8. This commenter also noted the extensive affirmative disclosure obligations the MSRB is seeking to impose on municipal advisors, and the lack of similar disclosure required of dealers. *See id.* As such, this commenter suggested that dealers providing advice should be required to do more than merely state that they are acting as an underwriter to avoid being deemed a financial advisor. *See id.* at 8. Rather, the commenter suggested that disclosure similar to that proposed for municipal advisors should be required for underwriters. *See id.*

[27] *See* NAIPFA Letter at 8.

[28] *See* Ehlers Letter.

[29] *See* AGFS Letter at 1.

[30] *See id.*

[31] *See id.*

[32] *See id.*

[33] *See id.* at 2. *See also* Kidwell Letter at 2–3 (stating that while conflicts of interest may have been disclosed to issuers, many may not fully understand how their interests could be adversely affected by permitting such conflicts of interest to exist).

[34] *See* AGFS Letter at 2.

[35] *See id.* at 2–3. The commenter also pointed out that the discussions should occur at the outset of the relationship, and prior to the time that issuers commit themselves to particular courses of action. *See id.* at 3.

[36] *See* PFM Letter, Joy Howard Letter, Nathan Howard Letter, NAIPFA Letter and Kidwell Letter.

[37] *See* Joy Howard Letter at 2.

[38] *Id.*

[39] *See id.*

[40] NAIPFA Letter at 6.

relationship and, in the proposed interpretive guidance, as amended by Amendment No. 1, the MSRB provides additional examples of what the earliest stage of a relationship may be. Amendment No. 1 would also amend the proposed interpretive guidance to provide that the required disclosure must make clear that the primary role of an underwriter is to purchase, or arrange the placement of, securities in an arm's-length commercial transaction between the issuer and the underwriter and that the underwriter has financial and other interests that differ from those of the issuer. Additionally, as amended, the proposed interpretive guidance would provide that the dealer must not engage in a course of conduct that is inconsistent with an arm's length relationship with the issuer in connection with such issue of municipal securities or the dealer will be deemed to be a financial advisor with respect to that issue and precluded from underwriting that issue by Rule G–23(d). The MSRB is of the view that these disclosures would be adequate to alert the issuer to the role of the dealer as an underwriter with respect to an issue, especially when coupled with the requirement that the dealer's course of conduct must not be inconsistent with its disclosures if it is to avoid being considered a financial advisor.

The Commission understands commenters' concerns regarding clarity of the roles of an underwriter and a financial advisor and believes that the requirement under the proposed rule, as amended, that a firm wishing to serve as an underwriter must make a written disclosure of its proposed role with respect to an issuance at the earliest stages of its relationship with the issuer and continue to engage in a course of conduct consistent with that role in connection with such issue, will help achieve that clarity. In addition, the Commission notes that a variety of facts and circumstances, including the presence or absence of another firm serving as a financial advisor with respect to that issuance, may ultimately inform any review of whether or not a dealer has engaged in a course of conduct consistent with the role of an underwriter with respect to that issue.

As discussed above, several commenters expressed concern that the proposed rule conflicted with the provisions of Section 15B(c)(1) of the Exchange Act[41] which provides that "municipal advisors have a fiduciary duty to their municipal entity clients."[42] The Commission notes that the proposed rule, as amended, explicitly does not define "whether provision of the advice permitted by Rule G–23 would cause the dealer to be considered a 'municipal advisor' under the Exchange Act." In addition, the proposed interpretive guidance, as amended, clarifies that "Rule G–23 is only a conflicts-of-interest rule and does not set normative standards for dealer conduct. In particular, Rule G–23, as amended, would not address whether the provision of any of the advice permitted by Rule G–23 would subject the dealer to a fiduciary duty as a 'municipal advisor.'"[43] The Commission further notes that although it shall not be a violation of Rule G–23(d) for a dealer acting as an underwriter to give advice with respect to the investment of the proceeds of the issue, municipal derivatives integrally related to the issue or other similar matters concerning the issue, as proposed in the Municipal Advisor Registration Proposing Release, such dealer would be required by the Commission to register as a municipal advisor with respect to such advice.[44] Since October 1, 2010, municipal advisors, and any persons associated with a municipal advisor, have had a fiduciary duty to any municipal entity for whom the municipal advisor acts as a municipal advisor. In addition, the Commission notes that a dealer acting as an underwriter who must also register as a municipal advisor may be subject to additional rules (including, but not limited to, limitations on unmanageable conflicts or additional disclosures regarding compensation and conflicts of interest) based upon fiduciary duty or other laws or rules.

B. Rebuttable Presumption of Financial Advisor Status

Several commenters objected to the rebuttable presumption in the proposed interpretive guidance, which stated that a dealer that provides advice to an issuer with respect to the issuance of municipal securities will be presumed to be a financial advisor with respect to that issue and suggested that the presumption be eliminated. One commenter suggested that the interpretive guidance does not provide any clarity because it states that an underwriter could still be considered a financial advisor by engaging in certain unspecified subsequent actions.[45] This commenter opined that rather than using presumptions, the rule should be that if a party is engaged by an issuer as a financial advisor, then it is a financial advisor; and if a party is engaged by an issuer as an underwriter, then it is an underwriter.[46] This commenter further stated that if the Commission does not believe issuers can understand the differences between those roles, it can prescribe disclosures to make the differences clear.[47]

Another commenter expressed concerns with the ability of underwriters to advise issuers in connection with an offering in the context of the proposed rebuttable presumption.[48] The commenter stated that, in connection with the solicitation of municipal underwriting business, prospective underwriters are frequently asked by issuers about structuring and strategic alternatives, comparative analyses and general market intelligence, and other relevant ideas, and this dialogue provides an important informational foundation for many issuers in the financing process.[49] As such, this commenter stated that the presumption that dealers are financial advisors would chill or eliminate this pre-engagement exchange, particularly because even if a dealer had properly alerted the issuer that it was acting solely as an underwriter, its subsequent course of conduct may still cause it to be considered a financial advisor and thus be precluded from participating in the underwriting.[50] The commenter stated that this problem is exacerbated because of the proposed deletion of the reference to compensation in Rule G–23(b), which has provided a bright line for determining whether a person is a financial advisor.[51] Consequently, the commenter suggested that the presumption be eliminated, and instead, the interpretive guidance should provide that dealers intending to act solely as underwriters make clear and unambiguous such intentions in their initial communications with the issuer.[52] Another commenter objected to

[41] 15 U.S.C. 78*o*–4(c)(1).

[42] *See, e.g.,* PFM Letter, Joy Howard Letter, NAIPFA Letter and Kidwell Letter.

[43] *See* Amendment No. 1 at 4.

[44] *See* Municipal Advisor Registration Proposing Release, *supra* note 11.

[45] *See* BDA Letter at 3.

[46] *See id.*

[47] *See id.*

[48] *See* SIFMA Letter at 3.

[49] *See id.* at 4.

[50] *See id.*

[51] *See id.*

[52] *See id.* This commenter further suggested that the proposed interpretive guidance should provide that a written agreement between the prospective underwriter and municipal issuer reflecting such understanding would, in fact, establish a presumption that the underwriter will continue to act in such role throughout the pendency of the offering. *See id.* at 4–5.

the proposed presumption and stated that underwriter conduct is clearly discernible because such transactions are formally concluded by a bond purchase agreement.[53]

On the other hand, several commenters requested more guidance about the content of the actions necessary to rebut the presumption of financial advisory status.[54] One commenter stated that "[t]o give the Rule any substantive meaning, the timing and content of a rebuttal of a municipal advisory relationship must be well defined * * * It is particularly important that the rebuttal be clear about the broker-dealer's role and its limits in the context of a negotiated transaction in which there is no municipal advisor."[55]

In response, in Amendment No. 1, the MSRB noted that Amendment No. 1 would amend the proposed interpretive guidance by removing the rebuttable presumption language and replacing it with language that a financial advisory relationship will be deemed to exist whenever a dealer renders the types of advice provided for in proposed Rule G–23(b), because the revised language is more consistent with the language of proposed Rule G–23(b).

C. Section 23(c): Writing Requirement for Financial Advisors

One commenter recommended that Rule G–23(c) be deleted or revised[56] because it is no longer necessary.[57] This commenter stated that the Dodd-Frank Act provided a definition of "municipal advisor" and the Commission's proposing release on the registration of municipal advisors made it clear that an individual will be treated as a municipal advisor regardless of whether these services are free.[58] As such, the commenter opined that a written agreement is unnecessary for determining whether the broker-dealer is a financial advisor.[59]

In response, in Amendment No. 1, the MSRB noted that Amendment No. 1 would amend the proposed interpretive guidance to reiterate what Rule G–23 has always provided: it is not necessary to have a writing in order for a financial advisory relationship to exist. Instead, Rule G–23(c) provides that a writing must be entered into prior to, upon or promptly after the inception of the financial advisory relationship. The Commission believes that the change in Amendment No. 1 clarifying that it is not necessary to have a written agreement for a financial advisory relationship to exist is consistent with the provisions of the Exchange Act.

D. Small and/or Infrequent Issuers

Several commenters[60] stated that the proposed amendments to Rule G–23 would harm small and infrequent issuers, with one commenter[61] specifically calling for an exemption for "Small Issue Deals" or "offerings under $5 million in aggregate principal amount" and another commenter[62] calling for an exemption for "issuances under $10 million."

One commenter expressed concern that the proposed rule change will adversely impact small municipal bond transactions because it will eliminate an already limited number of potential underwriters for such transactions, resulting in decreased competition, decreased choice, and increased costs to issuers.[63] Several other commenters expressed similar concerns about decreased competition, decreased choice, and increased costs.[64] Further, one commenter stated that it is unaware of any history of abuse in simple fixed rate bonds that make up most of the small issuances, and that any concern relating to potential abuse by financial advisors is addressed through federal and state fiduciary duties imposed on financial advisors.[65] One commenter suggested that, if the proposed rule change is approved, the MSRB carefully monitor the impact of the rule change on small and/or infrequent issuers and revise the rule if needed to increase market accessibility.[66]

On the other hand, one commenter that supported the proposed amendments to Rule G–23 did not support an exception to the proposed amendments for small and/or infrequent issuers.[67] This commenter noted that small and infrequent issuers will be the primary beneficiaries of the revised Rule G–23 because these issuers are the least likely to understand the conflicts of interest that arise when a financial advisor switches to serving as an underwriter.[68]

In Amendment No. 1, the MSRB stated that it believes that the potential negative impact on fees and market accessibility for small and/or infrequent issuers would be minimal compared to the protections that will be afforded to such issuers. The MSRB stated that it was persuaded by arguments that small and/or infrequent issuers are, in many cases, unable to appreciate the difference in the nature of the roles of a financial advisor and an underwriter and did not believe that exceptions should be provided for smaller offerings as suggested by several commenters. The Commission agrees that it is appropriate to apply the protections of proposed Rule G–23 to small and/or infrequent issuers.

E. Competitive Bid Offerings

Six commenters[69] supported changes to the proposed amendments that would exempt some or all competitively bid transactions from the proposed rule change. Several commenters stated that there has been no history of abuse by dealers that had previously served as financial advisors in competitive bids.[70] One commenter pointed out that the competitive bidding process for municipal issues has become almost exclusively electronic, and the electronic process provides for a

[53] *See* BMO Letter.

[54] *See* Joy Howard Letter at 5–8 and Fieldman Letter. For example, one commenter raised questions about the meaning of the phrases "in the course of acting as an underwriter" and "clearly identify itself as an underwriter" as they are used in the proposed interpretive guidance. *See* Joy Howard Letter at 5–8.

[55] Fieldman Letter. This commenter suggested that the rebuttal must state that the underwriter broker-dealer is not serving as a municipal advisor; that the underwriter also represents interests that may conflict with those of the issuer; and that the broker-dealer does not owe a fiduciary duty and duties of loyalty and care to the issuer. *See id.* This commenter also suggested that the rebuttal must be in writing and acknowledged by the issuer, and must be provided prior to the beginning of any work for the issuer. *See id.*

[56] *See* Joy Howard Letter at 3–4. This commenter suggested that the rule be modified such that a broker-dealer that intends to serve as an underwriter would be required to submit to the municipal entity a written document that defines the broker-dealer's role as an underwriter, and indicates that the underwriter is not serving as an advisor and is not serving as a fiduciary. *See id.* at 4.

[57] *See id.* at 3.

[58] *See id.*

[59] *See id.*

[60] *See e.g.,* RBC Letter, First Southwest Letter, BDA Letter and SIFMA Letter. *See also* Eastern Bank Letter.

[61] *See* First Southwest Letter at 1–2.

[62] *See* SIFMA Letter at 5.

[63] *See* First Southwest Letter at 1.

[64] *See* SIFMA Letter at 5 and BDA Letter at 2.

[65] *See* SIFMA Letter at 5.

[66] *See* BDA Letter at 2.

[67] *See* Joy Howard Letter at 10.

[68] *See id.*

[69] *See* Giles Letter, BDA Letter, Baird Letter, RBC Letter, SIFMA Letter and First Southwest Letter. One commenter stated that except for municipal bond transactions under $5 million, the commenter does not believe there should be an exception for competitively bid transactions. *See* First Southwest Letter at 1.

[70] *See* RBC Letter at 2. This commenter stated that there is no evidence that financial advisors structure transactions to give themselves an advantage, or are not diligent in seeking other bidders in order to improve their chances of being the successful bidder. *See id. See also* Baird Letter at 3; SIFMA Letter at 3; and Giles Letter at 1 (stating that the proposed rule change is based on the "specious argument" that "a conflict of interest might exist when a financial advisor acts as an underwriter," and that there is no tangible proof that an actual conflict of interest exists or that such conflict of interest has resulted in wrongdoing).

completely transparent, highly efficient and tamper proof process.[71] Another commenter stated that the municipal underwriting market is competitive, and competition and transparency resulting from a free and open market would prohibit inappropriate or unethical behavior by financial advisors acting as underwriters.[72] One other commenter stated that financial advisors would have no practical opportunity in these straightforward, simple contexts to structure an offering that might give them any competitive advantage.[73] Several commenters also expressed concern that by prohibiting the bid of financial advisors under the proposed rule change, issuers may end up being locked out of the market, or the lowest bid would be removed from the process, harming particularly the smaller issuers.[74] Moreover, some commenters stated that concerns relating to potential abuse by financial advisors would be addressed through their fiduciary duties under federal and state law.[75]

On the other hand, one commenter expressed support for the absence of an exception for competitive sales in the proposed rule change because this would ensure that financial advisors aggressively work to secure the largest number of bids possible.[76] This commenter acknowledged that there could be instances where a small issuer experiences difficulty in obtaining bids.[77] However, the commenter stated that if a financial advisor is allowed to switch roles to become an underwriter, the financial advisor would effectively be allowed to breach its fiduciary duty by structuring and marketing the transaction in a fashion to insure their success as the winning bidder rather than seeking to obtain the largest number of bids possible.[78]

In Amendment No. 1, the MSRB stated that it does not believe that the use of electronic bidding platforms mitigates the conflict of interest posed by a dealer financial advisor's switching to an underwriter role, in part, because such platforms are not necessarily available to all issuers. Further, in the Commission Notice, the MSRB stated its belief that involvement in this process provides a dealer financial advisor with information that can provide an unfair advantage when such dealer participates in a competitive bid transaction. The Commission believes that the MSRB's proposed rule change helps prevent potential conflicts of interest and/or unfair competition issues that could arise when a dealer financial advisor participates in a competitive bid transaction without limiting access to potential purchasers of an issuance of municipal securities.

F. Effective Date

Several commenters suggested that the six-month transition period provided in the proposed rule change should be extended. Commenters suggested various transitional timeframes to allow market participants adequate time to comply with any changes.[79] One commenter suggested a transitional period of one year to allow issuers, dealers, and financial advisors sufficient time to take action to comply with the rules.[80] Another commenter expressed concern that the six-month implementation period proposed by the MSRB for the proposed rule change is insufficient to avoid market disruption.[81] One commenter suggested incorporating a grandfather clause that would allow current Rule G–23 to continue to apply to financial advisory relationships that are in place at the time the proposed rule change is adopted.[82]

On the other hand, several commenters suggested that the transition period should be shortened or eliminated. One commenter suggested that in order to clarify and enforce the fiduciary duty of financial advisors, there should not be a transition period for prohibiting role switching from financial advisor to underwriter.[83] Another commenter stated that because municipal advisors had a fiduciary duty under federal law effective October 1, 2010, any role switching that occurred after that date is a violation of the Exchange Act.[84]

In response, in Amendment No. 1, the MSRB stated that it does not recommend changing the current proposal that the rule change be made effective for new issues for which the Time of Formal Award (as defined in MSRB Rule G–34) occurs more than six months after Commission approval. In addition, the MSRB does not recommend a grandfather provision, as the MSRB has determined that the effective date described above provides an ample time period for issuers of municipal securities to finalize any outstanding transactions that might be affected by the proposed rule change. The Commission believes that the proposed effective date for proposed Rule G–23 is appropriate.

G. Other Comments

Several commenters expressed concern that the MSRB never published the proposed interpretive guidance to proposed Rule G–23 for public comment before it was filed with the Commission, as it did with other amendments to Rule G–23.[85] In response, in Amendment No. 1, the MSRB noted that it filed the proposed rule change with the Commission in accordance with the requirements of Section 19(b) of the Exchange Act, which generally provides for a 21-day comment period following publication in the **Federal Register** of a rule change proposed by a self-regulatory organization.

Two commenters objected to the part of the proposed rule change that would allow for a dealer to serve as a financial advisor on one transaction and serve as the underwriter on a separate transaction for the same issuer.[86] One commenter suggested that proposed Rule G–23 be revised such that it would force the underwriter acting as an advisor to decide which role they will play for the issuer and prohibit the firm from playing both roles at the same

[71] *See* RBC Letter at 2. *See also* SIFMA Letter at 3 (stating that "competitively bid, non rated, non credit-enhanced, fixed rate municipal debt issuances in which the issuer utilizes an electronic bidding platform" should be exempt from the proposed rule change in order to ensure continued unfettered access to the credit markets for municipal issuers).

[72] *See* Giles Letter at 2. *See also* BDA Letter at 2 (stating that potential conflicts of interest for financial advisors who act as underwriters are eliminated in a fairly run, competitively bid offering of securities) and Giles Letter at 1 (stating that "any conflict of interest that might exist would be erased by permitting competitive bidding").

[73] *See* SIFMA Letter at 3.

[74] *See* RBC Letter at 2. This commenter opined that this proposed rule change would create an additional artificial barrier to entry to the market by non-rated competitive issuers because such issuers have historically depended on "bidders that are willing to do their homework in order to bid," such as financial advisors. *See id.* at 3. *See also* SIFMA Letter at 3 and Giles Letter at 2 (stating that the proposed rule change could be economically harmful to taxpayers by eliminating competitive bidders and precluding best execution for the issuer).

[75] *See* SIFMA Letter at 3. *See also* RBC Letter at 3.

[76] *See* Joy Howard Letter at 10.

[77] *See id.*

[78] *See id.*

[79] *See* BDA Letter, Baum Letter and SIFMA Letter.

[80] *See* BDA Letter at 3.

[81] *See* SIFMA Letter at 6.

[82] *See id.*

[83] *See* Joy Howard Letter at 9. This commenter stated that in MSRB Notice 2010–42, dated October 1, 2010, the MSRB stated that financial advisors are subject to a federal fiduciary duty to their municipal entity clients as of October 1, 2010, even before MSRB rulemaking on the subject. *See id.* As such, this commenter stated that any broker-dealer that has served as a financial advisor on or after October 1, 2010 and subsequently switched to serving as an underwriter has already violated its fiduciary duty. *See id.*

[84] *See* NAIPFA Letter at 8.

[85] *See e.g.,* PFM Letter at 1–2 and GFOA Letter at 2.

[86] *See* NAIPFA Letter at 9 and GFOA Letter at 1.

time.[87] This commenter suggested a one year cooling off period from the time an advisor terminates its role as a municipal advisor and the time the advisor would be allowed to negotiate an issue with the issuer or act in any other role that is inconsistent with the role of a fiduciary.[88] One commenter raised a concern that some broker-dealers serve as financial advisors with the objective of establishing a relationship with the issuer that will ultimately enable the company to serve as the underwriter for subsequent transactions, and that the proposed rule change does not resolve this conflict of interest.[89] As such, this commenter suggested that Rule G–23 require a two-year period after a financial advisory relationship has expired before a broker-dealer serving as a financial advisor can switch to serving as an underwriter.[90]

In response, in Amendment No. 1, the MSRB noted that it has determined to continue to apply Rule G–23 on an issue-by-issue basis. The proposed amendments would not prohibit a dealer financial advisor from providing financial advisory services on one issue and then serving as underwriter on another issue, even if the two issues were in the market concurrently. The Commission believes that applying proposed Rule G–23 on an issue-by-issue basis is consistent with the Exchange Act in light of the requirements in the proposed rule that a dealer clearly identify its role as an underwriter and engage in a course of conduct not inconsistent with that role.

Another commenter expressed concern about the requirement that a dealer may not act as a remarketing agent with respect to an issue for one year following the termination of an advisory relationship in connection with such issue.[91] This commenter opined that the one-year period is arbitrary and unnecessarily long, and should be no longer than three months.[92] In response, the MSRB noted in Amendment No. 1 that it has previously stated that it does consider it to be appropriate to impose a one-year cooling off period during which a dealer financial advisor could not serve as remarketing agent for the same issue of municipal securities. The MSRB stated that the one year period is a significant timeframe that would more adequately address any potential or actual conflicts of interest than the three month timeframe. The Commission agrees with the MSRB that a one-year cooling off period is appropriate.

One commenter stated that current Rule G–23 has provided balanced guidance to financial advisors who seek to act as underwriters without any history of abuse.[93] As such, the commenter suggested that the Commission consider sunsetting the proposed rule change two years after its implementation, which would allow the MSRB to assess the impact of the proposed rule change and would ensure reconsideration of the actual need for its continuance at such time.[94] In response, the MSRB stated in Amendment No. 1 that it does not recommend a sunset provision, as the MSRB and Commission comment periods have provided ample opportunity for public comment and considerations of those comments on the proposed rule change. The Commission agrees with the MSRB that a sunset provision is not appropriate. In particular, the Commission notes the importance of the protections that will be provided by proposed Rule G–23, as amended, and believes it is appropriate to have those protections on a going-forward basis and not to sunset the Rule after a specified period of time.

II. Discussion and Commission's Findings

The Commission has carefully considered the proposed rule change, the comment letters received, and Amendment No.1 and finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB.[95]

In particular, the Commission finds that the proposed rule, as amended, does not conflict with Section 15B(e)(4)(A) of the Exchange Act,[96] which defines the term "municipal advisor," because the proposed rule, as amended, explicitly does not state whether provision of the advice permitted by proposed Rule G–23, as amended, would cause the dealer to be considered a "municipal advisor" under the Exchange Act.

The Commission also finds that the proposed rule, as amended, does not conflict with the provisions of Section 15B(c)(1) of the Exchange Act,[97] which provides that "[a] municipal advisor * * * shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor" because, as the MSRB notes in Amendment No. 1, the proposed rule, as amended, does not set normative standards for dealer conduct. The Commission notes that other laws or rules may set the normative standards for the activities allowed by the proposed rule, as amended.

The Commission believes that the proposed rule, as amended, is consistent with Section 15B(b)(2) of the Exchange Act[98] and, in particular, Section 15B(b)(2)(C) of the Exchange Act,[99] which provides that the rules of the MSRB shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change, as amended, is consistent with Section 15B(b)(2) of the Exchange Act because it will help prevent potentially fraudulent and manipulative acts and practices caused by a dealer financial advisor serving as underwriter or placement agent for an issue of municipal securities for which it provided financial advisory services. Accordingly, the proposed rule change, as amended, will help protect municipal entities and help to perfect the mechanism of a free and open market in municipal securities to the benefit of investors, municipal entities, and the public interest.

Furthermore, the Commission finds that the proposed rule, as amended, is consistent with Section 15B(b)(2)(L)(iv) of the Exchange Act,[100] which requires that rules adopted by the MSRB:

> not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The Commission believes that the proposed rule, as amended, would principally affect dealer financial advisors that are not small municipal

[87] *See* NAIPFA Letter at 9.

[88] *See id.*

[89] *See* Joy Howard Letter at 9.

[90] *See id.* at 10.

[91] *See* SIFMA Letter at 5–6.

[92] *See id.*

[93] *See id.* at 6.

[94] *See id. See also* BMO Letter.

[95] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[96] 15 U.S.C. 78*o*–4(e)(4)(A).

[97] 15 U.S.C. 78*o*–4(c)(1).

[98] 15 U.S.C. 78*o*–4(b)(2).

[99] 15 U.S.C. 78*o*–4(b)(2)(C).

[100] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

advisors. Furthermore, it is likely that those dealer financial advisors that are small municipal advisors primarily serve as financial advisors to issuers of municipal securities that do not access the capital markets frequently and, when they do so, issue securities in small principal amounts. Those issuers may be less likely than larger, more frequent issuers to understand the conflict presented when their financial advisors also underwrite their securities. The Commission believes it is appropriate for the prohibitions in the proposed rule, as amended, to also apply to those dealer financial advisors that are small municipal advisors.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2011–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2011–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2011–03 and should be submitted on or before June 24, 2011.

IV. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, before the 30th day after the date of publication in the **Federal Register.** The Commission notes that the proposal was published for notice and comment, and the Commission received eighteen comment letters, which comments have been discussed in detail above.

The Commission believes that Amendment No.1 is consistent with the requirements of the Exchange Act and finds good cause, consistent with Section 19(b)(2) of the Act,[101] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB, and in particular, Sections 15B(b)(2),[102] 15B(c)(1),[103] and 15B(e)(4)(A) [104] of the Exchange Act. The proposal will become effective for new issues for which the Time of Formal Award (as defined in MSRB Rule G–34(a)(ii)(C)(1)(a)) occurs more than six months after the date of this order.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[105] that the proposed rule change (SR–MSRB–2011–03), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[106]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13752 Filed 6–2–11; 8:45 am]

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[101] 15 U.S.C. 78s(b)(2).

[102] 15 U.S.C. 78*o*–4(b)(2).

[103] 15 U.S.C. 78*o*–4(c)(1).

[104] 15 U.S.C. 78*o*–4(e)(4)(A).

[105] 15 U.S.C. 78s(b)(2).

[106] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64563; File No. SR–Phlx–2011–70]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Functionality of NASDAQ OMX PSX's Post-Only Order

May 27, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 19, 2011, NASDAQ OMX PHLX LLC (the "Exchange" or "PHLX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to modify the functionality of the Post-Only Order on NASDAQ OMX PSX ("PSX"). PHLX proposes to implement the rule change thirty days after the date of filing or as soon thereafter as practicable. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at PHLX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

PHLX proposes to modify the functionality associated with its existing Post-Only Order on PSX. Currently, if a Post-Only Order would lock an order on PSX at the time of entry, the order is re-priced and displayed by the System to one minimum price increment (*i.e.,* $0.01 or $0.0001) below the current low offer (for bids) or above the current best bid (for offers). Thus, if the best bid and best offer on the PSX book were $10.00 × $10.05, and a market participant entered a Post-Only Order to buy at $10.05, the order would be re-priced and displayed at $10.04. This aspect of the functionality of the order is not changing. In addition, if a Post-Only Order would cross an order on the System, the order will be repriced as described above unless the value of price improvement associated with executing against a resting order equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the book and subsequently provided liquidity, in which case the order will execute. As provided by Rule 3307, price improvement accrues to the party entering the order. Thus, if a sell order is on the book at $10 and a Post-Only Order to buy at $10.01 is entered, the order will execute at $10. This aspect of the order's functionality is also not changing.[3]

At present, however, the order is repriced in a similar manner if the order would lock or cross a protected quotation of another market center. Thus, if the national best offer of $10.05 is being displayed on another market center but not on PSX, at present an order to buy at $10.05 would be repriced and displayed at $10.04. Under the changed functionality that PHLX is proposing, if the order locks or crosses the other market center, the order will be accepted at the locking price (*i.e.,* the current low offer (for bids) or to the current best bid (for offers)) and displayed by the System to one minimum price increment (i.e., $0.01 or $0.0001) below the current low offer (for bids) or above the current best bid (for offers). Thus, if the national best bid and offer, as displayed on another market center, was $10 × $10.05, an order to buy at $10.05 or higher would be accepted at the locking price of $10.05, but would be displayed at $10.04. Subsequently, an incoming order to sell at $10.05 or lower would be matched against the Post-Only buy order. In this case, the incoming sell order would receive price improvement.

As a result of the change, the order will resemble more closely PSX's Price to Comply order, which uses a similar logic of retaining a locking price but displaying at a non-locking price. The modified Post-Only Order will serve to allow the market participant entering the order to post its order at its desired price, unless the price would lock or cross the PSX book, in which case the order will execute or be repriced, as is currently the case, to avoid the internal lock/cross. The revised order type is designed to provide market participants with better control over their execution costs and to provide them with a means to offer price improvement opportunities to other market participants.

2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(5) of the Act,[5] in particular, 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. PHLX also believes that the modified order is consistent with Rule 610(d) under Regulation NMS.[6] Rule 610(d) requires exchanges to establish, maintain, and enforce rules that require members reasonably to avoid "[d]isplaying quotations that lock or cross any protected quotation in an NMS stock." Such rules must be "reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock," and must "prohibit * * * members from engaging in a pattern or practice of displaying quotations that lock or cross any quotation in an NMS stock." Rule 600 under Regulation NMS[7] defines a "quotation" as a "bid or offer," and in turn defines "bid or offer" to mean "the bid price or the offer price *communicated* by a member * * * to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security * * *." Thus, the hidden price of the Post-Only Order is not a quotation under Regulation NMS, and is therefore covered neither by the provisions of Rule 610 pertaining to displayed quotations nor by the provision requiring rules to assure reconciliation of locked or crossed quotations. In this respect, the order is similar to PSX's existing Price to Comply order, which uses a hidden locking price and a displayed non-locking price to ensure compliance with this rule. It is also similar to the Post Only Order of the BATS Exchange and the BATS–Y Exchange, as described in BATS Exchange Rule 11.9(c)(4) and (6) and BATS–Y Exchange Rule 11.9(c)(4) and (6), and the Post Only Order of the EDGA Exchange and EDGX Exchange, as described in EDGA Exchange Rule 11.5(c)(4) and (5) and EDGX Exchange Rule 11.5(c)(4) and (5).

B. Self-Regulatory Organization's Statement on Burden on Competition

PHLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Rather, the change will promote greater competition by allowing PHLX to adopt functionality already in use at competing national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[3] The functionality was described in the original filing to establish a Post-Only Order on The NASDAQ Stock Market LLC ("NASDAQ") but was not fully reflected in the text of NASDAQ Rule 4751. *See* Securities Exchange Act Release No. 59392 (February 11, 2009), 74 FR 7943 (February 20, 2009) (SR–NASDAQ–2009–006). Subsequently, PHLX adopted identical rule text when it established PSX as its new facility for trading cash equity securities. Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR–PHLX–2010–79). Accordingly, the rule is being amended to provide a complete description of the order's current behavior when crossing an existing order on the System. PHLX also notes that NASDAQ has filed an identical proposed rule change to modify its Post-Only Order. *See* SR–NASDAQ–2011–070 (May 19, 2011).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 242.610(d).

[7] 17 CFR 242.600.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–70, and should be submitted on or before June 24, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13776 Filed 6–2–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of proposed retraction of a Class Waiver from the Nonmanufacturer Rule for Product Service Code (PSC) 9130, Liquid Propellants—Petroleum Base, under North American Industry Classification System (NAICS) code 324110 (Petroleum Refineries).

SUMMARY: The U.S. Small Business Administration (SBA) is proposing the retraction of a class waiver from the non-manufacturer rule for PSC 9130, Liquid Propellants, Petroleum Base, NAICS code 324110.

DATES: Comments and source information must be submitted June 20, 2011.

ADDRESSES: You may submit comments to Amy Garcia, Procurement Analyst, Small Business Administration, Office of Government Contracting, 409 3rd Street, SW., Suite 8800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Garcia, Procurement Analyst, by telephone at (202) 205–6842; by Fax at (202) 481–1630; or by e-mail at *amy.garcia@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), and SBA's implementing regulations require that recipients of Federal supply contracts set aside for small businesses, SDVO small businesses, women-owned small businesses, or Participants in the SBA's 8(a) BD Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b), 125.15(c), 127.505, Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. 13 CFR 121.1202(c). The SBA defines "class of products" based on the Office of Management and Budget's NAICS. In addition, SBA uses PSCs to further identify particular products within the NAICS code to which a waiver would apply. The SBA may then identify a specific item within a PSC and NAICS to which a class waiver would apply.

The SBA is proposing a retraction of the class waiver from the Nonmanufacturer Rule for PSC 9130 (Liquid Propellants—Petroleum Base) under NAICS code 324110. The waiver from the Nonmanufacturer Rule for PSC 9130 is being retracted based on information SBA received from the Defense Logistics Agency, Defense Energy Support Center (DESC), Fort Belvoir, VA. On May 11, 2009 (74 FR 21838) SBA published in the **Federal Register** a Notice of Intent to grant a waiver of the Nonmanufacturer Rule for PSC 9130 (Liquid Propellants—Petroleum Base). SBA finalized the waiver on June 8, 2009 (74 FR 2702). DESC was not aware of the notice until after the closing date for submission of comments. DESC has awarded prime contracts to, or received offers from,

multiple small business refiners within 24 months of the date the May 11, 2009, **Federal Register** Notice was published. On August 4, 2009, SBA published a Notice of Retraction of a Waiver from the Nonmanufacturer Rule for PSC 9130 (Liquid Propellants—Petroleum Base), under NAICS code 324110 (Petroleum Refineries) seeking comments on the proposed retraction of waiver. A final Notice of Retraction of a Waiver from the Nonmanufacturer Rule for PSC 9130 (Liquid Propellants—Petroleum Base), under NAICS code 324110 (Petroleum Refineries) was not published. Therefore, SBA is again proposing to Retract a Waiver from the Nonmanufacturer Rule for PSC 9130 (Liquid Propellants—Petroleum Base), under NAICS code 324110 (Petroleum Refineries). The public is invited to comment or provide source information to SBA on the proposed retraction of a waiver of the Nonmanufacturer Rule for the product(s) within 15 days after the date of posting in the **Federal Register**.

John W. Klein,

Acting Director, Office of Government Contracting.

[FR Doc. 2011–13777 Filed 6–2–11; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of Meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (RRSC) will hold a meeting on Wednesday, June 29, 2011, to consider TVA's Natural Resource Plan.

The RRSC was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

The management of the Tennessee Valley reservoirs and the lands adjacent to them has long been an integral component of TVA's mission. As part of implementing the TVA Environmental Policy, TVA is developing a Natural Resource Plan (NRP) that will help prioritize techniques for the management of TVA's biological and cultural resource management activities, recreation management activities, water resource protection and improvement activities, and reservoir lands planning. In accordance with the National Environmental Policy Act, TVA is also developing an accompanying Environmental Impact Statement (EIS) in which TVA will evaluate the preferred strategy for the NRP, as well as other viable alternative strategies. TVA is using the RRSC as a key stakeholder group throughout the development of the NRP to advise TVA on the issues, tradeoffs, and focus of environmental stewardship activities. The draft NRP and accompanying draft EIS were recently released for public comment. At the June 2011 meeting, TVA will be seeking advice from the RRSC on issues regarding the programs which comprise the NRP.

The meeting agenda includes the following:

1. Introductions.

2. Natural Resource Plan overview; Programs included in the NRP for biological, cultural, water, and recreational resources and reservoir lands planning; Historical spending; NRP funding and implementation; and incorporation of advice received from the RRSC at its April 2011 meeting.

3. Public Comments.

4. Council Discussion and Advice.

The RRSC will hear opinions and views of citizens by providing a public comment session. The public comment session will be held at 2 p.m. E.D.T., on Wednesday, June 29. Persons wishing to speak are requested to register at the door by 1 p.m. E.D.T., on Wednesday, June 29 and will be called on during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11B, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Wednesday, June 29 from 8:30 a.m. to 4 p.m. E.D.T.

ADDRESSES: The meeting will be held at Brasstown Valley Resort, 6321 U.S. Highway 76, Young Harris, Georgia, 30582 and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Beth Keel, 400 West Summit Hill Drive, WT 11B, Knoxville, Tennessee 37902, (865) 632–6113.

Dated: May 25, 2011.

Anda A. Ray,

Senior Vice President and Environmental Executive, Environment and Technology, Tennessee Valley Authority.

[FR Doc. 2011–13753 Filed 6–2–11; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2011–0183]

Access to Aircraft Situation Display (ASDI) and National Airspace System Status Information (NASSI)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of modification to the FAA/Subscriber Memorandum of Agreement (MOA).

SUMMARY: The FAA has decided that it is in the best interests of the United States Government and the general public to modify Section 9 of the June 1, 2006 MOA for Industry Access to Aircraft Situation Display (ASDI) and National Airspace System Status Information (NASSI) data, between the FAA and Direct Subscribers to ASDI and NASSI data-feeds. In recognition of the fact that the Privacy Act does not protect general aviation operators and on-demand air charter aircraft operating under 14 CFR part 135 ("on-demand aircraft") from public knowledge of their flight information, the FAA will require Direct Subscribers (as a condition of signing the MOA) and Indirect Subscribers (as a condition of signing agreements with Direct Subscribers) to block from ASDI and NASSI data-feeds available to the public any general aviation aircraft or on-demand aircraft the registration number for which a Certified Security Concern has been provided to the FAA by electronic mail at *CertifiedSecurityConcern@faa.gov* or by regular mail at FAA Certified Security Concern, ATO System Operations Services; Room 1002, 800 Independence Avenue, SW., Washington, DC 20591. The FAA will no longer accommodate any ASDI- or NASSI-related security or privacy requests, except such Certified Security Concern.

DATES: A Certified Security Concern will be due within July 5, 2011. The MOA amendment will be effective August 2, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Davis by telephone at (540) 422–4650 or by electronic mail at *barry.davis@faa.gov.*

SUPPLEMENTARY INFORMATION: The navigational facilities and services in the national airspace system (NAS)—including the air traffic controllers, radar- and satellite-based systems, air traffic control towers and centers, and the like—are funded through the Airport and Airway Trust Fund and the taxpayer-supported general fund,

administered by the FAA. The aviation industry, when operating under instrument flight rules (IFR), must provide flight-tracking data to the FAA, which the FAA uses for traffic flow management purposes.

In 1997, the FAA began to make air traffic flow management data available to the aviation and other industries through its Enhanced Traffic Management System (ETMS) Hubsite. The data consists of near real time position and other relevant flight data for every civil IFR aircraft receiving radar services within the NAS. The data is called aircraft situation display to industry (ASDI) and is filtered to exclude military and sensitive operations such as Presidential flights, drug interdiction flights, and other law enforcement and military efforts. The ASDI data-feed includes position (latitude and longitude) of aircraft, the aircraft's call sign, airspeed, altitude, heading, and flight plan information including origination and destination airports. 14 CFR 91.169. The information allows tracking of individual flights through the conclusion of each flight.

In 1998, the FAA released selective data elements of the national airspace system status information (NASSI) to industry to enhance the benefits to the ASDI data; which increases the dispatching flexibility for airlines enabling them to more efficiently manage their aircraft and crew and other operational resources. The NASSI data includes information on the status of airport runway visual range and special use airspace data as well as the status of other NAS components. At this time, the FAA granted access to the ASDI and NASSI data to Subscribers through a memorandum of agreement (MOA), which set forth the rights and responsibilities of the FAA and Direct Subscribers of the ASDI/NASSI data.

The publicly available ASDI hubsite, however, does not display complete information, due primarily to concerns of the National Business Aviation Association (NBAA) to limit public knowledge of flight paths of general aviation aircraft. In 1997, the NBAA began working with the FAA and ASDI Subscribers to develop a system to protect the personal privacy, as well as the security, of the NBAA members. This effort has culminated in a system under which general aviation aircraft owners or operators and on-demand aircraft have the ability to "block" aircraft identification information from the ASDI data feed at two levels, one at the FAA source (the FAA ETMS Hubsite) and a second via the FAA's agreement regarding the data displayed by ASDI Direct Subscribers. In these two ways, the publicly available Web sites either do not receive or filter from display certain general aviation corporate and other aircraft.

Under the "block" system between the NBAA and the FAA, the NBAA submits monthly to the FAA an updated list of aircraft to be blocked at the FAA source of the ASDI data feed. The FAA Block List consists of the aircraft registration numbers of those owners who want their aircraft to be blocked completely from distribution to Subscribers. This FAA Block List will filter all flight data information, which the FAA will not distribute to any Subscriber.

In contrast, under the "block" system between the aircraft owners and Direct Subscribers, the aircraft owners have filled out a Block Aircraft Registration Request (BARR) form, which the NBAA circulates monthly to all known Direct Subscribers. The BARR List contains aircraft call signs that owners wish to have blocked from public distribution. The FAA does not use or manage the list but section nine of the MOA has required Direct Subscribers to honor such requests.

In 2000, Congress directed the FAA to require that ASDI Direct Subscribers demonstrate the capability to selectively block the display of any data related to any identified aircraft registration number and agree to selective blocking upon the Administrator's request. 49 U.S.C. 44103, note (Pub. L. 106–181, Apr. 5, 2000, § 729, *Aircraft Situational Display Data* (ASDD)). The *Aircraft Situational Display Data* provision reads:

(a) In general.—A memorandum of agreement between the Administrator and any person that directly obtains aircraft situational display data from the Federal Aviation Administration shall require that—

(1) The person demonstrate to the satisfaction of the Administrator that the person is capable of selectively blocking the display of any aircraft-situation-display-to-industry derived data related to any identified aircraft registration number; and

(2) The person agree to block selectively the aircraft registration numbers of any aircraft owner or operator upon the Administration's request.

(b) Existing memoranda to be conformed.—Not later than 30 days after the date of the enactment of this Act, the Administrator shall conform any memoranda of agreement, in effect on such date of enactment, between the Federal Aviation Administration and a person under which that person obtains aircraft situational display data to incorporate the requirements of subsection (a).

Section nine of a 2006 MOA between the FAA and Direct Subscribers addresses the 2000 legislative directive.[1] Under this section, the FAA states that it accommodates industry initiatives that collect requests from general aviation aircraft owners to exclude their aircraft from ASDI data feeds available to the public, either in near real-time or in recorded (historical) format. The FAA further requires Direct Subscribers and Indirect Subscribers to respect the privacy and security interests of the general aviation aircraft owners or operators when developing or marketing ASDI or NASSI-based products. Due to these arrangements between the FAA, the general aviation aircraft operators, and the Direct and Indirect Subscribers, the public currently does not have access to concrete information about a large number of users of the NAS.

Today's change to FAA policy and the MOA will disclose the aircraft on the ASDI (time-delayed) Web site unless the general aviation owner or operator, or on-demand aircraft, submits to the FAA a Certified Security Concern. A Certified Security Concern would be based on either (a) the facts and circumstances establishing a Valid Security Concern (*i.e.,* a verifiable threat to person, property or company, including a threat of death, kidnapping or serious bodily

[1] Section nine of the MOA provides:

The ASDI and NASSI data includes the near realtime position and other flight data associated with civil instrument fight rules (IFR) aircraft. While commercial operators conduct business according to a published listing of service and schedule, general aviation operators do not. It is possible that public knowledge of the flight information of general aviation operators could compromise the privacy and/or security of individuals. The protection of such information is not covered under the Privacy Act (5 U.S.C. 552a), and the cost of developing and operating the technical mechanisms required to manage that information exceeds available FAA resources. The FAA recognizes that certain industry initiatives exist to collect requests from aircraft owners to exclude their aircraft from ASDI data feeds available to the public, either in near real time or in recorded (historical) format. The FAA accommodates these initiatives to the extent they support and respect these privacy and security interests. All Direct Subscribers (as a condition of signing this MOA) and Indirect Subscribers (as a condition of signing agreements with Direct Subscribers) are asked to consider and respect these privacy and security interests when developing and/or marketing ASDI and/or NASSI-based products. If the FAA determines that any Direct and/or Indirect Subscribers develop and/or market products that violate this provision, the FAA's rights under Section 15 [Termination of this Agreement] shall apply.

The MOA further defines a Direct Subscriber as an entity that receives the ASDI/NASSI data directly from the FAA ETMS Hubsite; an Indirect Subscriber is an entity that receives the ASDI/NASSI data from a Direct Subscriber or another Indirect Subscriber.

harm against an individual, a recent history of violent terrorist activity in the geographic area in which the transportation is provided, or a threat against a company); or (b) the general aviation aircraft owner or operator satisfying the requirement for a *bona fide* business-oriented security concern under Treasury Regulation 1.132–5(m), "Employer-provided transportation for security concerns," 26 CFR 1.132–5(m). A generalized security concern or privacy interest no longer will suffice to block the aircraft from the ASDI data feed. Absent appropriate certification, the ASDI data feed will disclose aircraft and flight specific information. It is important to note that this information does not disclose the identity of the occupants of the aircraft or the business or other purpose of the flight.

Under section 7.1.8 of the MOA, the FAA is authorized, and has the sole right, with timely notification, to modify the MOA if it is in the best interests of the United States Government or the general public. As explained more fully below, the FAA finds that the modification of the MOA conforms to the Federal Open Government Act, complies with Executive Branch policies and directives, makes Federal Government information more open, transparent and accessible to the public, and carries out the DOT Open Government Directive promoting proactive release of DOT data. The aircraft registration numbers of blocked aircraft and the associated flight plans are already releasable under the Freedom of Information Act (FOIA) and are not protected personal information under the Privacy Act. An agency may change its policies when in the public interest and is not compelled to retain outdated policies. Accordingly, the MOA modification is in the best interests of the Government and the public.

Consistency With Aircraft Situational Display Data (ASDD) Law

The NBAA and the National Air Transportation Association (NATA) state that the change to the MOA is not consistent with the ASDD provision, 49 U.S.C. 44103 note. Congress's intent behind the "selectivity" portion of this provision, according to NBAA and NATA, was to authorize privacy on behalf of a general aviation aircraft owner and to give the FAA merely a secondary role of facilitating the blocking at an aircraft owner's request. The NATA states that the requirement for an ASDI Subscriber to demonstrate a capability to "selectively block" data was intended to authorize the aircraft owner—not the FAA—to select the data to be blocked. The NBAA believes the ASDD provision was both intended to reinforce the existing BARR program and to ensure that the FAA continued its practice of honoring all blocking requests. They both contend that the FAA lacks discretion to determine which aircraft owners/operators are eligible for blocking and which requests it will forward to ASDI Subscribers.

The FAA disagrees with the respective associations' contentions that today's proposal is inconsistent with the ASDD provision. The text of the ASDD provision (see above) contains two features—(1) that the Subscriber is capable of "selectively blocking" aircraft tail numbers from the ASDI and (2) that the Subscriber will selectively block such data "upon the [FAA] Administration's request." The provision affords the FAA discretion in determining the circumstances under which it may "request" the selective blocking of the data. There is nothing in the ASDD provision that impairs the FAA's ability to deny requests to block data and to display ASDI-data.

Indeed, the ASDD provision does not direct the FAA to honor any or all requests of an aircraft owner. Rather, the FAA is authorized to make the request in circumstances it determines to be in the public interest. Therefore, the FAA may convey the request to the Subscriber on its own initiative or in response to a request made by an aircraft owner. In the latter circumstance, the FAA may look behind the reason for the aircraft owner's request to selectively block aircraft data. As explained further below, for reasons of transparency and in support of the Administration's Open Government efforts, the FAA has determined that requests for selective blocking should be honored only upon receipt of a Certified Security Concern.

Justification for Change in Policy

Several commentators, including the NBAA, NATA, General Aviation Manufacturers Association (GAMA), Sprint United Management Company, Global Business Travel Association (GBTA), McAfee & Taft P.C. (a law firm), and Patton Boggs LLP (a law firm), state that the FAA did not articulate a justification for the proposed change to the MOA and did not explain the findings underlying its conclusion that the change is in the best interest of the Government and the public. As explained below, today's change is justified by disclosure and openness requirements set forth in Federal law, executive branch directives and policies, and court decisions.

The Openness Promotes Effectiveness in our National Government Act of 2007 (the Open Government Act or the Act), Public Law 110–174 (Dec. 31, 2007), promotes openness in Government and enhances the Freedom of Information Act (FOIA) statute (5 U.S.C. 552) by requiring Federal agencies to be more transparent in their responses to FOIA requests. In particular, the Act strengthens FOIA "to promote accessibility, accountability, and openness in Government," finding:

- The American people firmly believe that our system of government must itself be governed by a presumption of openness;
- FOIA establishes a "strong presumption in favor of disclosure;"
- "Disclosure, not secrecy, is the dominant objective" of FOIA; and
- Congress should ensure that the Government "remains open and accessible to the American people and is always based not upon the 'need to know' but upon the fundamental 'right to know.'" 5 U.S.C. 552 note.

The Open Government Act underlines Congress' heightened interest in a Federal agency's responsiveness to, and compliance with, FOIA requests and disclosures, respectively. This Congressional support of openness and disclosure of agency records and information informs the FAA's decision to change its policy to one of presumed disclosure of the ASDI data-feed to the public.

Similarly, the Presidential Memorandum on Transparency and Open Government (January 21, 2009), the Presidential Memorandum on the Freedom of Information Act (January 21, 2009), an Office of Management and Budget (OMB) Open Government Directive (December 8, 2009), a U.S. Dept. of Justice Attorney General FOIA Memorandum (March 19, 2009), and a DOT Open Government Plan (2010–2015) require transparency in, and disclosure of, Government information. *http://www.dot.gov/open/plan.*

In particular, the Presidential Open Government Memorandum announced the Obama Administration's commitment to "creating an unprecedented level of openness in Government" and "establish[ing] a system of transparency, public participation, and collaboration." It directed departments and agencies to put information about their operations [and decisions] online and make it "readily available to the public." The OMB Open Government Directive, which implemented the Presidential Memorandum, states that, with respect to information "the presumption shall be in favor of openness" in order "to

increase accountability, promote informed participation by the public, and create economic opportunity." The Presidential FOIA Memorandum instructs Federal agencies, including the FAA, that FOIA should be administered with a "clear presumption: in the face of doubt, openness prevails." It further provides:

> The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, *or because of speculative or abstract fears.* (italics supplied)

The Attorney General FOIA Memorandum reinforces the principle that openness is the Government's default position for FOIA issues, directs an agency not to withhold information simply because it may do so legally, and encourages agencies to post information online in advance of FOIA requests. The DOT Open Government Plan requires the Department to be "even more transparent, participatory, and collaborative" and to release data "proactively" making it available online.

Under these Executive Branch policies and directives, the FAA cannot retain the default position of concealing information about general aviation aircraft flights on public ASDI data-feeds simply because of generalized privacy or security concerns. Rather, the FAA's default position must be one of openness. Accordingly, the FAA has determined that only a Certified Security Concern would justify nondisclosure of general aviation aircraft, or on-demand aircraft, flights.

The change in the MOA, to display general aviation aircraft, and on-demand aircraft, on the ASDI and NASSI data-feed websites in the absence of a Certified Security Concern, is in the best interests of the Government and the public. The NBAA says this change is not necessary because the FAA has disclosed no complaints from the public about the lack of ASDI or NAASI information or abuse of the BARR program by private aircraft. But complaints by the public are not pre-conditions to providing information to the public. Rather, Government disclosure of information it collects is an integral part of a constitutional democracy and informed public. By proactively disclosing information, the FAA is forestalling complaints about lack of access to Government-provided information and about potential abuse by private aircraft owners or operators of any aircraft blocking programs. As Congress recognized in its findings to the Open Government Act of 2007 (Pub. L. 110–175, Dec. 31, 2007; 5 U.S.C. 552 note), "our constitutional democracy, our system of self-government, and our commitment to popular sovereignty depends upon the consent of the governed; such consent is not meaningful unless it is informed consent." 5 U.S.C. 552 note, § 2(1)(A)–(B).

Additionally, two recent and significant court decisions inform the FAA's decision regarding whether general aviation aircraft, or on-demand aircraft, identities should be kept private. The first, *Federal Communications Commission (FCC)* v. *AT&T, Inc.,* 131 S. Ct. 1177 (2011), affirmed the FCC's finding that FOIA Exemption 7 does not protect a business' privacy because the term "personal privacy" does not extend to corporations. The second, *National Business Aviation Association (NBAA)* v. *Federal Aviation Administration,* 686 F. Supp. 2d 80 (D.D.C. 2010), affirmed the FAA's decision to release the list of NBAA members' aircraft registration numbers, because they were not protected under FOIA Exemption 4 as "commercial" information; nor were they protected under Exemption 6, which does not reach the privacy interests of businesses or corporations.

These intervening developments—by Congress, the Executive Branch, and the courts—caused us to reconsider whether it is in the best interest of the Government and the public to exclude from public view general aviation aircraft flight displays in the absence of a Certified Security Concern. As set forth above, given the strong public interest in openness and disclosure, we find that it is not.

Rationale for Certified Security Concern Requirement

The Open Government initiatives described above, however, do not mandate that Federal agencies disclose information on a *carte blanche* basis. *See* OMB Open Government Directive at 2 ("the presumption [with respect to Government information] shall be in favor of openness (to the extent permitted by law and subject to *valid* privacy, confidentiality, security or other restrictions))" (italics supplied); Attorney General's FOIA Memorandum at 1 ("disclosure obligation under the FOIA is not absolute. The Act provides exemptions to protect, for example, national security, personal privacy, privileged records, and law enforcement interests"); DOT Open Government Plan version 1.2, Overview (DOT will "increase agency transparency and accountability by * * * continuing to release DOT data in a timely manner by proactively making it available online in consistent, open formats, while assuring accuracy and protecting privacy, security, and confidentiality"). The FAA carefully considered whether the privacy and security concerns for blocking the general aviation aircraft and on-demand aircraft from ASDI data-feeds were "valid" under the OMB Open Government Directive and thereby subject to protection and non-disclosure.

The Presidential FOIA Memorandum is instructive in defining the term "valid" for purposes of withholding aircraft identification numbers from disclosure on ASDI/NASSI data feed. It instructs Federal agencies not to keep information confidential based on potential embarrassment or "speculative or abstract fears."

In applying the "validity" standard to an FAA request to selectively block aircraft identification numbers on ASDI/NASSI data-feed, it is logical to utilize the Treasury Regulation governing "Employer-provided transportation for security concerns." That regulation contains two features that make it applicable to these circumstances. First, it specifically applies to air transportation, expressly referring to "flights on the employer's aircraft" (26 CFR 1.132–5(m)(1), (2)(iii)) and to "employer-provided aircraft," (26 CFR 1.132–5(m)(4)). Second, it acknowledges concrete, non-speculative, non-generalized reasons for a security concern justifying use of corporate aircraft for personal flights. These reasons include as an "overall security program," factors such as a threat of death or kidnapping of or serious bodily harm to the employee, or a recent history of violent terrorist activity in the geographic area in which the transportation is provided. 26 CFR 1.132–5(m)(2).

The NBAA, NATA, McAfee & Taft P.C., Patton Boggs LLP, Peregrine Jet, LLC, Sprint United Management Company, and others comment that the Certified Security Concern requirement establishes an unjustifiably high bar and creates a test that the FAA lacks the ability to administer. We disagree. The new test is justified as complying with the Open Government policies and directives. As discussed above, a generalized, non-specific security concern would not constitute a "valid" concern under the Executive Branch directives. Moreover, the FAA, in most cases, anticipates relying on good-faith certifications.

Today's change to the MOA also comports with the *NBAA* FOIA decision as it relates to security concerns posed by the release of flight data. There, the court found it "highly unlikely" that the

FOIA release of the aircraft registration numbers would impact the security of aircraft or aircraft passengers. 686 F. Supp.2d at 87. The court stated that the public would receive only registration numbers, would not receive any other identifying or associated narrative, and the after-the-fact FOIA disclosure would not permit investigation of real-time location data. Likewise, the types of disclosures facilitated by today's amendment to the MOA are unlikely to impact the security of aircraft or aircraft passengers. The public ASDI/NASSI data-feed is not in real-time. Nevertheless, those aircraft owners or operators demonstrating Certified Security Concerns may have their aircraft identification withheld from public view.

The NBAA and MEDEX Global Solutions also question whether a U.S. Department of Homeland Security (DHS) Transportation Security Administration (TSA) Advisory–Security Information for Aircraft Owner/Operators & Airport Managers (April 20, 2006)—should qualify as a Valid Security Concern and a basis for non-disclosure. The TSA Advisory references an Arabic web forum message explaining how to identify private American jets and urging Muslims to destroy all such aircraft. This Advisory is generalized and, without more information or data, would not constitute an individualized threat to particular general aviation aircraft to satisfy the requirements of a "valid" security concern.

Application of Certified Security Concern to Corporate Aircraft Occupants and to On-Demand Air Charters

The NATA and others comment that the Certified Security Concern standard is too narrow and suggest that, at a minimum, it not only apply to an employee but extend to persons such as corporate directors, guests, and key shareholders who are authorized to use corporate aircraft. NATA also suggests that the Certified Security Concern cover on-demand air charters, operating under 14 CFR part 135, which currently participate in the FAA Block program to prevent unwanted tracking of the clientele they serve.

The FAA clarifies that the Certified Security Concern does extend to the security of the aircraft passengers who may not be employees of the aircraft owner or operator. Therefore, assuming a Valid Security Concern exists for corporate directors, guests and/or key shareholders, a Valid Security Concern may be provided to the FAA by a general aviation aircraft owner or operator who carries such passengers. If the FAA has sufficient advance notice of the Valid Security Concern, the FAA will block the aircraft data. The FAA does not intend the scope of the Valid Security Concern to be limited solely to the security of the aircraft owner's key employees.

The FAA will accommodate a Valid Security Concern for certain passengers on an on-demand aircraft, assuming a certification is submitted and the FAA has sufficient advance notice, which is a minimum of thirty days, to block the aircraft data. The request would also need to specify the period of time during which a Valid Security Concern will exist regarding the security of the aircraft or aircraft passengers.

Privacy Concerns

Many commenters, individuals and those representing a wide spectrum of industry, including Altria Client Services, ConocoPhillips, Devon Energy Corporation, Federal Express Corporation, GAMA, Gaylord Entertainment Company, Jim Wilson & Associates, LLC (a real estate development company), the NBAA, NATA, Proctor & Gamble Company, and Sprint United Management Company, claimed that the FAA is improperly ignoring the privacy and/or business concerns of the corporate aircraft owners, key employees, shareholders, executives, and/or passengers and occupants of other general aviation or on-demand charter aircraft. The FAA finds that these concerns previously were rejected in the context of FOIA Exemption 4 (5 U.S.C. 552(b)(4)) (pertaining to "commercial" information), FOIA Exemption 6 (5 U.S.C. 552(b)(6)) (pertaining to "personnel files" and "personal privacy"); and FOIA Exemption 7(C) (5 U.S.C. 552(b)(7)(C)) (pertaining to "personal privacy" rights). Courts rejected the privacy concerns raised by commenters in the analogous FOIA context and FAA does not find that they have identified a material basis to treat the FAA's release of time-delayed NAS data differently.

The FOIA Exemption 4 and 6 issues were addressed in the *NBAA* case, a "reverse" FOIA case. There, a Federal district court granted the FAA's summary judgment motion that general aviation aircraft registration numbers are releasable. The court found that general aviation aircraft registration numbers are not protected "commercial" information (under FOIA Exemption 4) when released as historical ASDI website data, that FOIA Exemption 4 does not protect personal information, and that FOIA Exemption 6 does not protect the privacy interests of businesses or corporations.

FOIA Exemption 4 protects from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). The court affirmed the FAA's finding that the registration numbers were not protected as "commercial" under Exemption 4, because the registration numbers do not provide commercial information. Although the NBAA argued in that case that the ASDI data release could result in public knowledge of "sensitive negotiations, likely business transactions or future movement of senior company leadership possibly jeopardizing their security as well as proprietary business information," the court found the public would not be able to determine the identity of the occupants, discover the business purpose of the flight, track the flight in real-time, or discern the reasons the aircraft owner had for blocking the information. 686 F. Supp. 2d at 86–87. Rather, with further inquiry and using the registration numbers, the public could find only the name of the owner who sought to block the information disclosure, the make and model of the aircraft, and flight data, without any narrative.

After finding that the registration numbers did not constitute commercial information within the meaning of FOIA Exemption 4, the court addressed NBAA's contention that that data should be protected under privacy and security interests because its release would compromise the privacy and security of the aircraft and their "high profile" occupants. As to the privacy interest, the court found that "personal privacy" concerns of general aviation aircraft occupants are not a relevant concern under Exemption 4, because that exemption covers "confidential *commercial* information." 686 F.Supp.2d at 87.

Turning to Exemption 6, which exempts from public disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy," the court found it does not provide a basis for protecting asserted privacy interests of general aviation aircraft owners or operators. It held that FOIA Exemption 6 "does not extend to * * * businesses or corporations." *Id. See also FCC,* 131 S. Ct. at 1184 ("[W]e have regularly referred to [Exemption 6] as involving an individual's right to privacy.")

With regard to Exemption 7, the Supreme Court in *FCC* v. *AT&T* recently decided that a corporation has no

"personal privacy" rights under that provision. Exemption 7(C) protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that [their] production * * * could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(7)(C). Thus, the Court rejected the notion that a corporation may claim a privacy interest in protecting information that would "embarrass" it. 131 S. Ct. at 1181. The Court explained that, as a matter of tort common law, the concept of "personal privacy" did not apply to corporations. *Id.* at 1183–84.

Many of the commenters, particularly NBAA, NATA and McAfee & Taft, state that disclosure of the aircraft identification numbers on the ASDI/NASSI data-feeds constitutes an unwarranted invasion of privacy of aircraft owners and operators. They believe that disclosure is a threat to the competitiveness of U.S. companies, because it may enable interested persons to track potential business transactions or mergers.As stated in Section 9 of the MOA, the Privacy Act (5 U.S.C. 552a) does not protect the ASDI Web site information:

> The protection of such information [flight information of general aviation operators] is not covered under the Privacy Act (5 U.S.C. 552a), and the cost of developing and operating the technical mechanisms required to manage that information exceeds available FAA resources.

Aircraft registration information (including aircraft type, current status and ownership of aircraft, registration number, *etc.*) is in a System of Records protected by the Privacy Act. (See System Notice for Privacy Act Record System, DOT/FAA 801, Aircraft Registration System; 65 FR 19,518 (Apr. 11, 2000). As stated in the System Notice, however, one of the routine uses of this information is to "[m]ake aircraft registration data available to the public." *Id.*

Moreover, some commenters, including the NBAA and McAfee & Taft P.C., claim that disclosure of general aviation aircraft on the ASDI/NAASI database would unlawfully allow the tracking of aircraft, in violation of the Fourth Amendment's protection against unreasonable searches and seizures and would amount to a type of "warrantless government surveillance." The Fourth Amendment protections against unreasonable searches and seizures, however, are not applicable to the ASDI/NAASI database. The FAA is not tracking aircraft in the context of enforcing criminal statutes; rather it tracks aircraft operating under IFR, for safety purposes and to manage the efficient use of the navigable airspace. Therefore, any concerns about warrantless surveillance are not relevant to the ASDI/NAASI database disclosure.[2]

The commenters further contend that the FAA is required by privacy expectations to continue to block general aviation and on-demand aircraft. They point to various Federal statutes through which Congress has directed state and Federal agencies to protect individuals' privacy interests.[3] The NATA states that, because the privacy interests of aircraft owners are similar to those of automobile owners, the FAA should adapt the protections in Drivers Privacy Protection Act of 1994 to general aviation aircraft owners and operators.

The FAA notes that the Federal statutes and policies on privacy referred to by the NBAA and the NATA pertain to other Federal and State agencies and interests and not to the FAA's ASDI/NASSI database program. The FAA may not adopt, for purposes of finding "valid" privacy concerns on the part of aircraft owners or operators or their passengers, the statutes that are applicable in other situations simply because Congress has seen fit to authorize certain Federal agencies or States to regulate and enforce specific privacy protections. The Executive Branch policies authorize a Federal agency to withhold from disclosure only information that is supported by "valid" privacy or security concerns.

Administrative Processes

The NBAA also asserts that the Notice did not comply with administrative procedures.[4] The FAA, however, need not comply with the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* to effect changes to the MOA, because it simply is modifying an agreement it has entered into with Subscribers to access FAA data under the FAA's procurement authority, 49 U.S.C. 106(l)(6), which is independent of the APA. The MOA change is designed to improve the FAA's management of its data to enhance transparency and openness to the public. The FAA is taking this action after evaluating the public interest, and the action is in full accordance with the agency's public interest responsibilities on behalf of Open Government and transparency.

Additionally, the Executive Orders do not create any enforceable substantive or procedural right against the United States.[5] Consequently, the procedures and Executive Orders cited by NBAA are not controlling in this situation. As stated in section 4 of MOA, the FAA's authority to enter into it "is governed by" 49 U.S.C. 106(l)(6). That statutory provision states that:

> The [FAA] Administrator is authorized to enter into and perform such contracts, leases, cooperative agreements, or other transactions, as may be necessary to carry out the functions of the Administrator and the Administration [FAA]. The Administrator may enter into such contracts, leases, cooperative agreements, and other transactions with any * * * person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate.

Amending section 9 of the MOA as proposed is merely a change to the MOA "terms and conditions" that the Administrator deems appropriate, consistent with the change procedure set forth in the MOA. The MOA is not an FAA rule, and amendment of the MOA does not, in itself, require the FAA to adhere to the rulemaking process set forth in the APA.

Nevertheless, this amendment to the MOA is arguably a change to FAA

[2] The NBAA refers to a "search and seizure case," *United States* v. *Maynard,* 615 F.3d 544 (D.C. Cir. 2010), holding that the police may not use a GPS device to track a suspect for a prolonged period. This decision is in the minority and does not supersede the holding in *United States* v. *Knotts,* 460 U.S. 276 (1983) that "[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." 460 U.S. at 281.

[3] The NBAA, for example, cites to a collection of statutes (the Telemarketing and Consumer Fraud and Abuse Prevention Act; the Telephone Consumer Protection Act of 1991; the Internal Revenue Service confidentiality requirements in 26 U.S.C. 6103; the Family Educational Rights and Privacy Act; the Health Insurance Portability and Accountability Act; the Fair Credit Reporting Act; the Children's Online Privacy Protection Act; the Telephone Consumer Protection Act; the Electronic Communications Privacy Act; the Cable Communications Policy Act; the Video Privacy Protection Act; the Gramm-Leach Bliley (Financial Services Modernization Act); the Controlling the Assault of Non-Solicited Pornography and Marketing Act; the Health Information Technology for Economic and Clinical Health Act) and FTC/Department of Commerce Internet Policy Task Force reports and proposed legislation in the area of privacy, as examples that the FAA should follow.

[4] The NBAA states that the Notice needs to conform to Executive Order 12866, 64 Federal Register, Part VIII (Oct. 4, 1993), "Regulatory Planning and Review," which requires an identification of the problem the agency intends to address. EO 12866 is not, by its terms, applicable here, because the Notice merely amends a voluntary Memorandum of Agreement between the FAA and Subscribers to an FAA-provided data-feed. Even if the Executive Order applied, the Notice identifies the problem it intends to address—that is, to improve the transparency and openness on the FAA ASDI- and NASSI data-feeds to the public, in compliance with the Executive Branch Open Government directives and policies.

[5] Id., EO 12866; see also, Executive Order 13563, Sec. 7(d), "General Provisions," 76 FR 3,821 (Jan. 21, 2011), "Improving Regulation and Regulatory Review."

policy that affects members of the public, and, the FAA has accordingly complied and is fully complying with the APA for purposes of adequately informing the public of the proposed change and providing them with sufficient time to comment. For example, the Notice provided the statement of the basis and purpose of the proposed change—that of the best interest of the Government and of providing public knowledge of information about aircraft that has been judicially determined, not to be protected as commercial or privacy-protected information. As described above, disclosure of the information is also justified by the Open Government Act and Open Government Presidential directives and executive orders and policies.

The NBAA states that DOT Order 2100.5 (1980), pertaining to streamlining regulations, requires the FAA's Notice to be clear, based on necessity, consider alternatives, and not impose unnecessary burdens. The DOT Order, however, is not legally binding; it serves for internal guidance and procedural purposes only, without creating any requirements. Moreover, the FAA Notice clearly and adequately states the proposed change in the MOA and the basis for the change. It proposed, for comment, an alternative to the current, broad exclusion from ASDI/NASSI data-feed for general aviation aircraft owner and operators. The comments reflected the parties' understanding of the proposed change, the reasons for the change, and suggested alternatives to the proposed change. Accordingly, the FAA provided adequate notice for informed comment. The 30 day comment period was sufficient and complied, to the extent applicable, with the APA. The FAA received no requests for further time within which to accept comments.

The NBAA also asserts that the Notice did not discuss or analyze the costs and benefits associated with the new restrictions, under Executive Orders 12866 and 13563. However, the Notice does not constitute a regulation subject to a cost/benefit analysis. Rather, it is at most merely a change in policy regarding how and when the FAA will release public information. Further, even if the Notice was subject to cost/benefit analysis, the commenters did not submit data, information, or statistics on costs, if any, that they might assert to be associated with the Notice. In any event, the costs associated with compliance with a Certified Security Concern already have been undertaken by corporations or businesses to comply with the Treasury regulation and, for companies or individuals that are concerned about security threats, the costs to ascertain and verify such threats would have inherent benefits to those concerned. The benefits to disclose, in the ASDI/NASSI data-feed, those aircraft without Certified Security Concerns, would inure to the public in the form of more transparency and openness as to the use by general aviation aircraft of the Federally-subsidized airports and airways.

Modified Section 9 of the MOA

Accordingly, section 9 of the MOA is hereby modified as follows:

9. Security Interests

The ASDI and NASSI data includes the near real time position and other flight data associated with civil instrument flight rules (IFR) aircraft. While commercial operators conduct business according to a published listing of service and schedule, general aviation operators and on-demand air charter aircraft operating under 14 CFR part 135 ("on-demand aircraft") do not. It is possible that public knowledge of the ASDI and NASSI data of certain general aviation and on-demand aircraft operators could compromise the security of individuals or property. General aviation aircraft identification numbers must be excluded from public ASDI and NASSI data-feeds in the event a general aviation aircraft owner or operator provides the FAA, at least annually, a written certification (a "Certified Security Concern") that (a) the facts and circumstances establish a Valid Security Concern regarding the security of the owner's or operator's aircraft or aircraft passengers; or (b) the general aviation aircraft owner or operator satisfies the requirements for a *bona fide* business-oriented security concern under Treasury Regulation 1.132–5(m). On-demand aircraft identification numbers must be excluded from public ASDI and NASSI data-feeds in the event an on-demand aircraft operator provides the FAA, with a minimum of thirty days' advance notice and specification of the period of time during which a Valid Security Concern will exist with respect to that aircraft, a written certification that the facts and circumstances establish a Valid Security Concern regarding the security of the aircraft or aircraft passengers. The FAA will provide the Direct Subscribers, on a monthly basis, a list of the aircraft covered by a Certified Security Concern.

A Valid Security Concern is a verifiable threat to person, property or company, including a threat of death, kidnapping or serious bodily harm against an individual, a recent history of violent terrorist activity in the geographic area in which the transportation is provided, or a threat against a company. The FAA will no longer accommodate any ASDI- or NASSI- related security or privacy requests, except such Certified Security Concern. All Direct Subscribers (as a condition of signing this MOA) and Indirect Subscribers (as a condition of signing agreements with Direct Subscribers) must block any general aviation aircraft, and on-demand aircraft, registration numbers included on the FAA-provided list of aircraft covered by a Certified Security Concern. If the FAA determines that any Direct or Indirect Subscriber develops or markets products that violate this provision, the FAA's rights under Section 15 shall apply.

Conclusion

For the reasons set forth above, effective 60 days from the date of this Notice, the FAA will no longer accommodate requests to bar the release of aircraft flight tracking data unless an aircraft owner or operator provides a Certified Security Concern, as defined in this Notice. Absent a Certified Security Concern by a general aviation aircraft owner or operator (and absent a Valid Security Concern by an on-demand aircraft), the FAA will disclose aircraft on its ASDI and NASSI websites and will not request that Subscribers exclude those aircraft on the public (time-delayed) ASDI- and NASSI data-feeds. The information to be disclosed on the ASDI/NASSI data-feeds would include the aircraft position, call sign, airspeed, heading and flight plan as well as status of airport runway visual range, special use airspace data and status of other NAS components. The FAA will maintain the current system of blocking the release of aircraft tracking data until the effective date of the Notice.

To be blocked from the ASDI/NASSI data-feeds, any general aviation aircraft owner or operator covered by a Certified Security Concern must submit such concern within 30 days from the date of this Notice and at least annually thereafter to the FAA by electronic mail at *CertifiedSecurityConcern@faa.gov* or by regular mail at FAA Certified Security Concern; ATO System Operations Services; Room 1002; 800 Independence Avenue, SW.; Washington, DC 20591. An on-demand aircraft covered by a Valid Security Concern must similarly submit such concern on a minimum of 30 days' notice and specify the period of time during which such a security concern will exist with respect to the aircraft or

aircraft passengers. Any such submission must specify whether such request is to block the aircraft identification number prior to the FAA's release of the data-feed, or to block the aircraft identification number from release by the Direct Subscribers. Should a specific request not be made, the FAA will block the identification number prior to its release of the data-feed.

The FAA will contact each Direct Subscriber to execute a revised MOA, incorporating the modified section nine, within 60 days of this Notice.

Issued in Washington, DC, on May 27, 2011.

Marc L. Warren,

Acting Chief Counsel, Federal Aviation Administration.

[FR Doc. 2011–13757 Filed 6–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on June 29, 2011, at 10 a.m.

ADDRESSES: The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591, 10th floor, MacCracken Room.

FOR FURTHER INFORMATION CONTACT: Renee Butner, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591, telephone (202) 267–5093; fax (202) 267–5075; e-mail *Renee.Butner@faa.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee taking place on June 29, 2011, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. The Agenda includes:

1. Discussion of Potential Restructuring of ARAC
2. Discussion of ARAC EXCOM Role in Implementing Future of Aviation Advisory Committee (FAAC) Recommendation #22
3. Update on FAA Response to Process Improvement Working Group (PIWG) Recommendations
4. Review of the Retrospective Regulatory Review Report
5. Issue Area Status Reports From Assistant Chairs
6. Remarks From Other EXCOM Members

Attendance is open to the interested public but limited to the space available. The FAA will arrange teleconference service for individuals wishing to join in by teleconference if we receive notice by June 22. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area are responsible for paying long-distance charges.

The public must arrange by June 22 to present oral statements at the meeting. The public may present written statements to the executive committee by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on May 31, 2011.

Dennis Pratte,

Acting Director, Office of Rulemaking.

[FR Doc. 2011–13826 Filed 6–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35518]

Maine Northern Railway Company—Trackage Rights Exemption—Montreal, Maine & Atlantic Railway, Ltd.

Pursuant to a written trackage rights agreement, Montreal, Maine & Atlantic Railway, Ltd. (MMA) has agreed to grant overhead trackage rights to the Maine Northern Railway Company (MNRC) between Madawaska, Me. (at or about milepost 260 on MMA's Madawaska Subdivision) and the connection to the Canadian National Railway (CN) in St. Leonard, N.B. (at or about milepost 194.1 on CN's Nappadoggin Subdivision), plus additional trackage described more completely in the agreement, which MNRC attaches to its notice.[1] MNRC recognizes that, although the trackage rights agreement covers some track in Canada, Board jurisdiction only extends to the U.S.-Canada border at Van Buren, Me.

This trackage rights transaction stems from MMA's attempt to abandon a connecting line in Northern Maine. The Board granted an application to abandon that line, which is approximately 233 miles long, in a decision served in December 2010.[2] The 233 miles of line was then acquired by the State of Maine, by and through its Department of Transportation (State), in January 2011. The State has chosen a new operator for the 233-mile line, MNRC, and, as part of the State's agreement to acquire the line, MMA has agreed to grant these trackage rights so that MNRC can access directly CN to the north once MNRC begins to operate the line. MNRC plans to file a modified certificate under 49 CFR 1150.22 for Board authority to operate the 233-mile line.[3]

The transaction can be consummated on or after June 19, 2011 (30 days after the exemption was filed), unless otherwise ordered by the Board.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast*

[1] Specifically, the agreement includes trackage "* * * between MP 260 and the connection with MMA's Van Buren Subdivision at MP 264 and between the connection with MMA's Van Buren Subdivision and MP V 22.7 of the Van Buren Subdivision, and between MP V 22.7 of the Van Buren Subdivision and the connection with CN at MP 194.1 of CN's Nappadoggin Subdivision, including the trackage across the Van Buren Bridge, * * * and the track between MP V 22.7 and MP V 23.72 for headroom * * *."

[2] *See Montreal, Me. & Atl. Ry.—Discontinuance of Service and Aban.—in Aroostook and Penobscot Cntys, Me.,* AB 1043 (Sub-No. 1) (STB served Dec. 27, 2010).

[3] The transaction in Docket No. FD 35518 is related to the following concurrently filed pleadings. In Docket No. FD 35519, *Maine Northern Railway Company—Trackage Rights Exemption—Montreal, Maine & Atlantic Railway, Ltd.,* MNRC has filed a notice of exemption for overhead trackage rights over an MMA line to the south to access Eastern Maine Railway (EMR), to which MMA also has agreed as part of the State's acquisition of the 233-mile line. In Docket No. FD 35520, *The New Brunswick Railway Company—Continuance in Control Exemption—Maine Northern Railway Company,* The New Brunswick Railway Company (NBRC), the parent company of both EMR and MNRC, has filed a petition for exemption to continue in control of EMR and MNRC once MNRC becomes a Class III carrier upon filing the modified certificate. MNRC and NBRC have asked that the Board make all these exemptions effective on June 15, 2011. The Board will address their request in its decision in Docket No. FD 35520.

Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by June 13, 2011 (at least 7 days before the exemption becomes effective), unless otherwise ordered the Board.

An original and 10 copies of all pleadings, referring to Docket No. FD 35518, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karyn A. Booth, Thompson Hine LLP, Suite 800, 1920 N Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 31, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–13881 Filed 6–2–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35519]

Maine Northern Railway Company—Trackage Rights Exemption—Montreal, Maine & Atlantic Railway, Ltd.

Pursuant to a written trackage rights agreement, Montreal, Maine & Atlantic Railway, Ltd. (MMA) has agreed to grant overhead trackage rights to the Maine Northern Railway Company (MNRC) between Millinocket, Me. (at or about milepost 109 on MMA's Millinocket Subdivision) and Brownville Junction, Me. (at or about milepost 104.84 on the Mattawamkeag Subdivision of the Eastern Maine Railway (EMR)), including MMA's Brownville Junction Yard.

This trackage rights transaction stems from MMA's attempt to abandon a connecting line in Northern Maine. The Board granted an application to abandon that line, which is approximately 233 miles long, in a decision served in December 2010.[1] The 233 miles of line was then acquired by the State of Maine, by and through its Department of Transportation (State), in January 2011. The State has chosen a new operator for the 233-mile line, MNRC, and, as part of the State's agreement to acquire the line, MMA has agreed to grant these trackage rights so that MNRC can access directly EMR to the south once MNRC begins to operate the line. MNRC plans to file a modified certificate under 49 CFR 1150.22 for Board authority to operate the 233-mile line.[2]

The transaction is expected to be consummated on or after June 19, 2011 (30 days after the exemption was filed), unless otherwise ordered by the Board.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by June 13, 2011 (at least 7 days before the exemption becomes effective), unless otherwise ordered by the Board.

An original and 10 copies of all pleadings, referring to Docket No. FD 35519, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karyn A. Booth, Thompson Hine LLP, Suite 800, 1920 N Street., NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 31, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–13886 Filed 6–2–11; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Montreal, Me. & Atl. Ry.—Discontinuance of Service and Aban.—in Aroostook and Penobscot Cntys, Me.,* AB 1043 (Sub-No. 1) (STB served Dec. 27, 2010).

[2] The transaction in Docket No. FD 35519 is related to the following concurrently filed pleadings. In Docket No. FD 35518, *Maine Northern Railway Company—Trackage Rights Exemption—Montreal, Maine & Atlantic Railway, Ltd.,* MNRC has filed a notice of exemption for overhead trackage rights over an MMA line to the north to access Canadian National Railway, to which MMA also has agreed as part of the State's acquisition of the 233-mile line. In Docket No. FD 35520, *The New Brunswick Railway Company—Continuance in Control Exemption—Maine Northern Railway Company,* The New Brunswick Railway Company (NBRC), the parent company of both EMR and MNRC, has filed a petition for exemption to continue in control of EMR and MNRC once MNRC becomes a Class III carrier upon filing the modified certificate. MNRC and NBRC have asked that the Board make all these exemptions effective on June 15, 2011. The Board will address their request in its decision in Docket No. FD 35520.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of one Specially Designated National or Blocked Person Pursuant to Executive Order 13315, as Amended

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name an individual whose property and interests in property have been unblocked pursuant to Executive Order 13315 of August 28, 2003, "Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions," as amended by Executive Order 13350 of July 30, 2004.

DATES: The removal of this individual from the SDN List is effective as of May 26, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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 August 28, 2003, the President issued Executive Order 13315(the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.,* the National Emergencies Act, 50 U.S.C. 1601 *et seq.,* section 5 of the United Nations Participation Act, as amended, 22 U.S.C.

287c, section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution 1483 of May 22, 2003. In the Order, the President expanded the scope of the national emergency declared in Executive Order 13303 of May 22, 2003, to address the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in that country, and the development of political, administrative, and economic institutions in Iraq. The Order blocks the property and interests in property of, *inter alia,* persons listed on the Annex to the Order.

On July 30, 2004, the President issued Executive Order 13350, which, *inter alia,* replaced the Annex to Executive Order 13315 with a new Annex that included the names of individuals and entities, including individuals and entities that had previously been designated under Executive Order 12722 and related authorities.

The Department of the Treasury's Office of Foreign Assets Control has determined that the individual identified below, whose property and interests in property were blocked pursuant to Executive Order 13315, as amended, should be removed from the SDN List.

The following designation is removed from the SDN List: RICKS, Roy, 87 St. Mary's Frice, Benfleet, Essex, United Kingdom (individual) [IRAQ2]

The removal of this individual's name from the SDN List is effective as of May 26, 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: May 26, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–13827 Filed 6–2–11; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

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Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT [REMOVED PRIVATE FIELD]

[Docket No. FR–5477–N–22]

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 7266, 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 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; *Army:* Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202 *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave, NW., 4th Floor, Washington, DC 20006: (202) 208–5399; *Navy:* Mr. Albert Johnson, Director of Real Estate, Department of the Navy, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9305; (These are not toll-free numbers).

Dated: May 26, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 06/03/2011

Suitable/Available Properties

Building

California

Facility 1
OTHB Radar Site
Tulelake CA 91634
Landholding Agency: Air Force
Property Number: 18200830012
Status: Unutilized
Comments: 7920 sq. ft., most recent use—communications

Facility 2
OTHB Radar Site
Tulelake CA 91634
Landholding Agency: Air Force
Property Number: 18200830014
Status: Unutilized
Comments: 900 sq. ft., most recent use—veh maint shop

Facilities 3, 4
OTHB Radar Site
Tulelake CA 91634
Landholding Agency: Air Force
Property Number: 18200830015
Status: Unutilized
Comments: 4160 sq. ft. each, most recent use—communications

Facility 1
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830016
Status: Unutilized
Comments: 16566 sq. ft., most recent use—communications

Facility 2
OTHB Radar Site

Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830017
Status: Unutilized
Comments: 900 sq. ft., most recent use—veh maint shop

Facility 4
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830018
Status: Unutilized
Comments: 14,190 sq. ft., most recent use—communications

Facility 6
OTHB Radar Site
Christmas Valley CA 97641
Landholding Agency: Air Force
Property Number: 18200830019
Status: Unutilized
Comments: 14,190 sq. ft., most recent use—transmitter bldg.

Colorado

7 Bldgs.
U.S. Air Force Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18201020002
Status: Unutilized
Directions: 6501, 6502, 6503, 6504, 6505, 6507, and 6508
Comments: 2222 sq. ft. each

Bldg. 6506
US Air Force Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18201020019
Status: Unutilized
Comments: 2222 sq. ft.

Bldg. 810—Trailer
270 South Aspen Street
Buckley AFB
Aurora CO
Landholding Agency: Air Force
Property Number: 18201110005
Status: Unutilized
Comments: Off-site removal only; 1,768 sq. ft; current use: pilot crew qtrs., fair conditions—$5,000 (estimated in repairs)

Bldg 811—Crews Trailer
272 South Aspen Street
Buckley AFB
Aurora CO 80011
Landholding Agency: Air Force
Property Number: 18201110008
Status: Unutilized
Comments: Off-site removal only, 2340 sq. ft., current use; pilot crew qtrs., fair conditions —estimated $5,000 in repairs

Hawaii

Bldg. 849
Bellows AFS
Bellows AFS HI
Landholding Agency: Air Force
Property Number: 18200330008
Status: Unutilized
Comments: 462 sq. ft., concrete storage facility, off-site use only

Illinois

1LT A.J. Ellison
Army Reserve
Wood River IL 62095
Landholding Agency: GSA
Property Number: 54201110012
Status: Excess
GSA Number: 1–D–II–738
Comments: 17,199 sq. ft. for the Admin. Bldg., 3,713 sq. ft. for the garage, public space (roads and hwy) and utilities easements, asbestos and lead base paint identified most current use: unknown.

Maine

Bldgs 1, 2, 3, 4
OTH–B Radar Site
Columbia Falls ME
Landholding Agency: Air Force
Property Number: 18200840009
Status: Unutilized
Comments: Various sq. ft., most recent use—storage/office

Minnesota

FAA Outer Marker
9935 Newton Ave.
Minneapolis MN 55431
Landholding Agency: GSA
Property Number: 54201120010
Status: Excess
GSA Number: 1–I–MN–594
Comments: Public space and utilities easements; 108 sq. ft.

New York

Bldg. 240
Rome Lab
Rome NY 13441
Landholding Agency: Air Force
Property Number: 18200340023
Status: Unutilized
Comments: 39108 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 247
Rome Lab
Rome NY 13441
Landholding Agency: Air Force
Property Number: 18200340024
Status: Unutilized
Comments: 13199 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 248
Rome Lab
Rome NY 13441
Landholding Agency: Air Force
Property Number: 18200340025
Status: Unutilized
Comments: 4000 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 302
Rome Lab
Rome NY 13441
Landholding Agency: Air Force
Property Number: 18200340026
Status: Unutilized
Comments: 10288 sq. ft., presence of asbestos, most recent use—communications facility

South Carolina

256 Housing Units
Charleston AFB
South Side Housing
Charleston SC
Landholding Agency: Air Force
Property Number: 18200920001
Status: Excess
Comments: Various sq. ft., presence of asbestos/lead paint, off-site use only

Texas

FAA RML Facility
11262 N. Houston Rosslyn Rd.
Houston TX 77086
Landholding Agency: GSA
Property Number: 54201110016
Status: Surplus
GSA Number: 7–U–TX–1129
Comments: 448 sq. ft., recent use: storage, asbestos has been identified in the floor

Virginia

Hampton Rds, Shore Patrol Bldg
811 East City Hall Ave
Norfolk VA 23510
Landholding Agency: GSA
Property Number: 54201120009
Status: Excess
GSA Number: 4–N–VA–758
Comments: 9,623 sq. ft.; current use: storage, residential

Land

California

Parcels L1 & L2
George AFB
Victorville CA 92394
Landholding Agency: Air Force
Property Number: 18200820034
Status: Excess
Comments: 157 acres/desert, pump-and-treat system, groundwater restrictions, AF access rights, access restrictions, environmental concerns

Louisiana

Almonaster
4300 Almonaster Ave.
New Orleans LA 70126
Landholding Agency: GSA
Property Number: 54201110014
Status: Surplus
GSA Number: 7–D–LA–0576
Comments: 9.215 acres

Missouri

Communications Site
County Road 424
Dexter MO
Landholding Agency: Air Force
Property Number: 18200710001
Status: Unutilized
Comments: 10.63 acres

Outer Marker Annex
Whiteman AFB
Knob Noster MO 65336
Landholding Agency: Air Force
Property Number: 18200940001
Status: Unutilized
Comments: 0.75 acres, most recent use—communication

Annex No. 3
Whiteman AFB
Knob Noster MO 65336
Landholding Agency: Air Force
Property Number: 18201020001
Status: Underutilized
Comments: 9 acres

North Carolina

0.14 acres
Pope AFB
Pope AFB NC
Landholding Agency: Air Force
Property Number: 18200810001
Status: Excess

Comments: Most recent use—middle marker, easement for entry

Texas

0.13 acres
DYAB, Dyess AFB
Tye TX 79563
Landholding Agency: Air Force
Property Number: 18200810002
Status: Unutilized
Comments: Most recent use—middle marker, access limitation

Suitable/Unavailable Properties

Building

Alaska

Dalton-Cache Border Station
Mile 42 Haines Highway
Haines AK 99827
Landholding Agency: GSA
Property Number: 54201010019
Status: Excess
GSA Number: 9–G–AK–0833
Directions: Bldgs. 1 and 2
Comments: 1,940 sq. ft., most recent use—residential and off-site removal only

Arizona

Willcox Patrol Station
200 W. Downew Street
Willcox AZ 85643–2742
Landholding Agency: GSA
Property Number: 54201110004
Status: Surplus
GSA Number: 9–X–AZ–0860
Comments: 2,448 sq. ft., most recent use: detention facility

California

Defense Fuel Support Pt.
Estero Bay Facility
Morro Bay CA 93442
Landholding Agency: GSA
Property Number: 54200810001
Status: Surplus
GSA Number: 9–N–CA–1606
Comments: Former 10 acre fuel tank farm w/ associated bldgs/pipelines/equipment, possible asbestos/PCBs

Former SSA Bldg.
1230 12th Street
Modesto CA 95354
Landholding Agency: GSA
Property Number: 54201020002
Status: Surplus
GSA Number: 9–G–CA–1610
Comments: 11,957 sq. ft., needs rehab/seismic retrofit work, potential groundwater contamination below site, potential flooding

Georgia

Fed. Bldg. Post Office/Court
404 N. Broad St.
Thomasville GA 31792
Landholding Agency: GSA
Property Number: 54201110006
Status: Surplus
GSA Number: 4–G–GA–878AA
Comments: 49,366 total sq. ft. Postal Svc currently occupies 11,101 sq. ft. through Sept. 30, 2012. Current usage: gov't offices, asbestos has been identified as well as plumbing issues.

Iowa

U.S. Army Reserve
620 West 5th St.
Garner IA 50438
Landholding Agency: GSA
Property Number: 54200920017
Status: Excess
GSA Number: 7–D–IA–0510
Comments: 5,743 sq. ft., presence of lead paint, most recent use—offices/classrooms/storage, subject to existing easements

Maryland

Appraisers Store
Baltimore MD 21202
Landholding Agency: GSA
Property Number: 54201030016
Status: Excess
GSA Number: 4–G–MD–0623
Comments: Redetermination: 169,801 sq. ft., most recent use—federal offices, listed in the Nat'l Register of Historic Places, use restrictions

Michigan

Social Security Bldg.
929 Stevens Road
Flint MI 48503
Landholding Agency: GSA
Property Number: 54200720020
Status: Excess
GSA Number: 1–G–MI–822
Comments: 10,283 sq. ft., most recent use—office

CPT George S. Crabbe USARC
2901 Webber Street
Saginaw MI
Landholding Agency: GSA
Property Number: 54201030018
Status: Excess
GSA Number: 1–D–MI–835
Comments: 3,891 sq. ft., 3-bay garage maintenance building

Mississippi

James O. Eastland
245 East Capitol St.
Jackson MS 39201–2409
Landholding Agency: GSA
Property Number: 54201040020
Status: Excess
GSA Number: 4–G–MS–0567–AA
Directions: Federal Bldg. and Courthouse
Comments: 14,000 sq. ft., current/recent use: gov't offices and courtrooms, asbestos identified behind walls, and historic bldg. preservation covenants will be included in the Deed of Conveyance

Land
Vicksburg
Vicksburg MS 39180
Landholding Agency: GSA
Property Number: 54201110007
Status: Excess
GSA Number: 4–D–MS–0568–AA
Comments: 11 acres, unpaved w/radio tower on the land, current use: communications, Warren Co. currently holds the license until 08/31/2014 however, revocable by the Sect. of Army

Missouri

Federal Bldg/Courthouse
339 Broadway St.
Cape Girardeau MO 63701
Landholding Agency: GSA
Property Number: 54200840013
Status: Excess
GSA Number: 7–G–MO–0673
Comments: 47,867 sq. ft., possible asbestos/lead paint, needs maintenance & seismic upgrades, 30% occupied—tenants to relocate within 2 yrs

New Hampshire

Federal Building
719 Main St.
Parcel ID: 424–124–78
Laconia NH 03246
Landholding Agency: GSA
Property Number: 54200920006
Status: Excess
GSA Number: 1–G–NH–0503
Comments: 31,271 sq. ft., most recent use—office bldg., National Register nomination pending

New Jersey

Camp Petricktown Sup. Facility
US Route 130
Pedricktown NJ 08067
Landholding Agency: GSA
Property Number: 54200740005
Status: Excess
GSA Number: 1–D–NJ–0662
Comments: 21 bldgs., need rehab, most recent use—barracks/mess hall/garages/quarters/admin., may be issues w/right of entry, utilities privately controlled, contaminants

North Carolina

Greensboro Federal Bldg.
320 Federal Place
Geensboro NC 27401
Landholding Agency: GSA
Property Number: 54201040018
Status: Excess
GSA Number: 4–G–NC–750
Comments: 94,809 sq. ft. office bldg., major structural issues exist with exterior brick facade

Ohio

Oxford USAR Facility
6557 Todd Road
Oxford OH 45056
Landholding Agency: GSA
Property Number: 54201010007
Status: Excess
GSA Number: 1–D–OH–833
Comments: Office bldg./mess hall/barracks/simulator bldg./small support bldgs., structures range from good to needing major rehab

Belmont Cty Memorial USAR Ctr
5305 Guernsey St.
Bellaire OH 43906
Landholding Agency: GSA
Property Number: 54201020008
Status: Excess
GSA Number: 1–D–OH–837
Comments: 11,734 sq. ft.—office/drill hall; 2,519 sq. ft.—maint. shop

Army Reserve Center
5301 Hauserman Rd.
Parma OH 44130
Landholding Agency: GSA
Property Number: 54201020009
Status: Excess
GSA Number: I–D–OH–842
Comments: 29, 212, and 6,097 sq. ft.; most recent use: office, storage, classroom, and drill hall; water damage on 2nd floor; and wetland property

Oregon

3 Bldgs/Land
OTHR–B Radar
Cty Rd 514
Christmas Valley OR 97641
Landholding Agency: GSA
Property Number: 54200840003
Status: Excess
GSA Number: 9–D–OR–0768
Comments: 14,000 sq. ft. each/2626 acres, most recent use—radar site, right-of-way

U.S. Customs House
220 NW 8th Ave.
Portland OR
Landholding Agency: GSA
Property Number: 54200840004
Status: Excess
GSA Number: 9–D–OR–0733
Comments: 100,698 sq. ft., historical property/National Register, most recent use—office, needs to be brought up to meet earthquake code and local bldg codes, presence of asbestos/lead paint

Residence
140 Government Road
Malheur Nat'l Forest
John Day OR 97845
Landholding Agency: GSA
Property Number: 54201040012
Status: Excess
GSA Number: 9–A–OR–0786–AA
Comments:1560 sq. ft., presence of asbestos/lead paint, off-site use only

South Carolina

Naval Health Clinic
3600 Rivers Ave.
Charleston SC 29405
Landholding Agency: GSA
Property Number: 54201040013
Status: Excess
GSA Number: 4–N–SC–0606
Comments: Redetermination: 399,836 sq. ft., most recent use: office

Tennessee

NOAA Admin. Bldg.
456 S. Illinois Ave.
Oak Ridge TN 38730
Landholding Agency: GSA
Property Number: 54200920015
Status: Excess
GSA Number: 4–B–TN–0664–AA
Comments: 15,955 sq. ft., most recent use—office/storage/lab

Texas

FAA Outermarker
13418 Kuykendahl Rd.
Houston TX 77090
Landholding Agency: GSA
Property Number: 54201040019
Status: Surplus
GSA Number: 7–U–TX–1128
Comments: 48 sq. ft., construction/alteration prohibited unless a determination of no hazard to air navigation is issued by the FAA, restrictions imposed by ordinances of the city of Houston, possible asbestos/PCBs

Virginia

Tract 05–511, Qrts. 11
7941 Brock Rd.
Spotsylvania VA 22553
Landholding Agency: GSA
Property Number: 54201110001
Status: Excess
GSA Number: 4–I–VA–0756
Comments: 1642 sq. ft., off-site removal only, previously reported by Interior and published as suitable/available in the 10.22.2010 FR

Washington

Bldg. 404/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420002
Status: Unutilized
Comments: 1996 sq. ft., possible asbestos/lead paint, most recent use—residential

11 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420003
Status: Unutilized
Comments: 2134 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 297/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420004
Status: Unutilized
Comments: 1425 sq. ft., possible asbestos/lead paint, most recent use—residential

9 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420005
Status: Unutilized
Comments: 1620 sq. ft., possible asbestos/lead paint, most recent use—residential

22 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420006
Status: Unutilized
Comments: 2850 sq. ft., possible asbestos/lead paint, most recent use—residential

51 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420007
Status: Unutilized
Comments: 2574 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 402/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420008
Status: Unutilized
Comments: 2451 sq. ft., possible asbestos/lead paint, most recent use—residential

5 Bldgs./Geiger Heights
Fairchild AFB
222, 224, 271, 295, 260
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420009
Status: Unutilized
Comments: 3043 sq. ft., possible asbestos/lead paint, most recent use—residential

5 Bldgs./Geiger Heights
Fairchild AFB
102, 183, 118, 136, 113
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420010
Status: Unutilized
Comments: 2599 sq. ft., possible asbestos/lead paint, most recent use—residential

Fox Island Naval Lab
630 3rd Ave.
Fox Island WA 98333
Landholding Agency: GSA
Property Number: 54201020012
Status: Surplus
GSA Number: 9–D–WA–1245
Comments: 6405 sq. ft.; current use: office and lab

West Virginia

Naval Reserve Center
841 Jackson Ave.
Huntington WV 25704
Landholding Agency: GSA
Property Number: 54200930014
Status: Excess
GSA Number: 4–N–WV–0555
Comments: 31,215 sq. ft., presence of asbestos/lead paint, most recent use—office

Harley O. Staggers Bldg.
75 High St.
Morgantown WV 26505
Landholding Agency: GSA
Property Number: 54201020013
Status: Excess
GSA Number: 4–G–WV–0557
Comments: 57,600 sq. ft.; future owners must maintain exposure prevention methods (details in deed); most recent use: P.O. and federal offices

Land

Arizona

0.23 acres
87th Ave.
Glendale AZ
Landholding Agency: GSA
Property Number: 54201010005
Status: Excess
GSA Number: 9–I–AZ–853
Comments: 0.23 acres used for irrigation canal

Guadalupe Road Land
Ironwood Road
Apache Junction AZ 95971
Landholding Agency: GSA
Property Number: 54201010012
Status: Surplus
GSA Number: 9–AZ–851–1
Comments: 1.36 acres, most recent use—aqueduct reach

Houston Road Land
Ironwood Road
Apache Junction AZ 85278
Landholding Agency: GSA
Property Number: 54201010013
Status: Surplus
GSA Number: 9–AZ–854
Comments: 5.89 acres, most recent use—aqueduct reach

Land
95th Ave/Bethany Home Rd
Glendale AZ 85306
Landholding Agency: GSA
Property Number: 54201010014
Status: Surplus
GSA Number: 9–AZ–852

Comments: 0.29 acre, most recent use—irrigation canal

0.30 acre
Bethany Home Road
Glendale AZ 85306
Landholding Agency: GSA
Property Number: 54201030010
Status: Excess
GSA Number: 9–I–AZ–0859
Comments: 10 feet wide access road

California

Parcel F–2 Right of Way
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201030012
Status: Surplus
GSA Number: 9–N–CA–1508–AI
Comments: Correction: 631.62 sq. ft., encroachment

Parcel F–4 Right of Way
Seal Beach CA
Landholding Agency: GSA
Property Number: 54201030014
Status: Surplus
GSA Number: 9–N–CA–1508–AK
Comments: 126.32 sq. ft., within 3 ft. set back required by City

Drill Site #3A
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040004
Status: Surplus
GSA Number: 9–B–CA–1673–AG
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #4
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040005
Status: Surplus
GSA Number: 9–B–CA–1673–AB
Comments: 2.21 acres, mineral rights, utility easements

Drill Site #6
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040006
Status: Surplus
GSA Number: 9–B–CA–1673–AC
Comments: 2.13 acres, mineral rights, utility easements

Drill Site #9
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040007
Status: Surplus
GSA Number: 9–B–CA–1673–AH
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #20
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040008
Status: Surplus
GSA Number: 9–B–CA–1673–AD
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #22
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040009
Status: Surplus
GSA Number: 9–B–CA–1673–AF
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #24
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040010
Status: Surplus
GSA Number: 9–B–CA–1673–AE
Comments: 2.06 acres, mineral rights, utility easements

Drill Site #26
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040011
Status: Surplus
GSA Number: 9–B–CA–1673–AA
Comments: 2.07 acres, mineral rights, utility easements

Massachusetts

FAA Site
Massasoit Bridge Rd.
Nantucket MA 02554
Landholding Agency: GSA
Property Number: 54200830026
Status: Surplus
GSA Number: MA–0895
Comments: Approx 92 acres, entire parcel within MA Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program

Missouri

Tract LLWAS K3
Mexico City Ave.
Kansas City MO 64153
Landholding Agency: GSA
Property Number: 54200940004
Status: Surplus
GSA Number: 7–U–MO–0687AA
Comments: 0.034 w/easements

FAA
North Congress Ave & 110th St.
Kansas City MO 64153
Landholding Agency: GSA
Property Number: 54201110005
Status: Surplus
GSA Number: 7–U–MO–0688
Comments: Correction from 02/25/2011 Federal Register: .23 acres, legal constraint: utility easement only, current use: vacant land; move to unavailable; expression of interest received

Pennsylvania

Approx. 16.88
271 Sterrettania Rd.
Erie PA 16506
Landholding Agency: GSA
Property Number: 54200820011
Status: Surplus
GSA Number: 4–D–PA–0810
Comments: Vacant land

South Dakota

Tract 133
Ellsworth AFB
Box Elder SD 57706
Landholding Agency: Air Force
Property Number: 18200310004
Status: Unutilized
GSA Number:
Comments: 53.23 acres

Tract 67
Ellsworth AFB
Box Elder SD 57706
Landholding Agency: Air Force
Property Number: 18200310005
Status: Unutilized
GSA Number:
Comments: 121 acres, bentonite layer in soil, causes movement

Texas

Cottonwood Bay
14th St./Skyline Rd.
Grand Prairie TX
Landholding Agency: GSA
Property Number: 54201010004
Status: Surplus
GSA Number: 7–N–TX–846
Comments: 110 acres includes a 79-acre water body, primary storm water discharge basin. Remediation responsibilities, subject to all institutional controls

FAA Outermarker—Houston
Spring TX 77373
Landholding Agency: GSA
Property Number: 54201040001
Status: Surplus
GSA Number: 7–U–TX–1110
Comments: 0.2459 acres, subject to restrictions/regulations regarding the Houston Intercontinental Airport, may not have access to a dedicated roadway

FAA Outermarker
Rt. 156/Rt. 407
Justin TX 76247
Landholding Agency: GSA
Property Number: 54201040002
Status: Surplus
GSA Number: 7–U–TX–1127
Comments: 0.38 acre, FAA restrictions

Utah

Processing and Disposal Site
Monticello UT 84535
Landholding Agency: GSA
Property Number: 54201030008
Status: Surplus
GSA Number: 7–B–UT–431–AO
Comments: 175.41 acres, permanent utility easement, small portion may have contaminated groundwater, most recent use—grazing/farming

Unsuitable Properties

Building

Alabama

5 Bldgs.
Maxwell-Gunter AFB
Maxwell AL 36112
Landholding Agency: Air Force
Property Number: 18201030001
Status: Unutilized
Directions: 28, 423, 811, 839, 1081
Reasons: Secured Area

4 Bldgs.
Birmingham IAP
Birmingham AL
Landholding Agency: Air Force
Property Number: 18201120050
Status: Underutilized
Directions: 202, 204, 205, 391
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Alaska

Bldg. 9485
Elmendorf AFB
Elmendorf AK
Landholding Agency: Air Force

Property Number: 18200730001
Status: Unutilized
Reasons: Secured Area

Bldg. 70500
Seward AFB
Seward AK 99664
Landholding Agency: Air Force
Property Number: 18200820001
Status: Unutilized
Reasons: Secured Area

Bldg. 3224
Eielson AFB
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18200820002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 1437, 1190, 2375
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830002
Status: Unutilized
Directions: 3300, 3301, 3315, 3347, 3383
Reasons: Extensive deterioration, Secured Area

4 Bldgs.
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830003
Status: Unutilized
Directions: 4040, 4332, 4333, 4480
Reasons: Secured Area, Extensive deterioration

Bldgs. 6122, 6205
Eielson AFB
Eielson AK
Landholding Agency: Air Force
Property Number: 18200830004
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 8128
Elmendorf AFB
Elmendorf AK 99506
Landholding Agency: Air Force
Property Number: 18200830005
Status: Underutilized
Reasons: Secured Area

Bldgs. 615, 617, 751, 753
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 18200920015
Status: Unutilized
Reasons: Extensive deterioration, Within airport runway clear zone, Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 100, 101
Point Barrow Long Range
Radar Site
Point Barrow AK
Landholding Agency: Air Force
Property Number: 18201010001
Status: Unutilized
Reasons: Within airport runway clear zone, Within 2000 ft. of flammable or explosive material

Bldg. 100 and 101
Long Range Radar Site
Point Barrow AK
Landholding Agency: Air Force
Property Number: 18201020003
Status: Unutilized
Reasons: Within airport runway clear zone, Within 2000 ft. of flammable or explosive material

7 Bldgs.
Eareckson Air Station
Eareckson AK 99546
Landholding Agency: Air Force
Property Number: 18201020004
Status: Unutilized
Directions: 132, 152, 153, 750, 3013, 3016, and 4012
Reasons: Extensive deterioration, Within airport runway clear zone, Secured Area

33 Bldgs.
Eielson AFB
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18201040005
Status: Excess
Directions: 5136, 5137, 5138, 5139, 5140, 5141, 5142, 5143, 5144, 5161, 5162, 5163, 5183, 5184, 5185, 5186, 5196, 5197, 5211, 5255, 5256, 5257, 5259, 5260, 5261, 5262, 5263, 5264, 5265, 5266, 5267, 5268
Reasons: Secured Area, Extensive deterioration

Bldg. 5198 and 5258
660 Edna Street
Eielson AFB AK
Landholding Agency: Air Force
Property Number: 18201120023
Status: Excess
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
Clear AFB
Clear Denali AK
Landholding Agency: Air Force
Property Number: 18201120024
Status: Unutilized
Directions: 101, 103, 104, 105, 150
Reasons: Secured Area, Extensive deterioration

Bldg. 5198
Eielson AFB
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18201120054
Status: Excess
Reasons: Extensive deterioration, Secured Area

Arizona

Railroad Spur
Davis-Monthan AFB
Tucson AZ 85707
Landholding Agency: Air Force
Property Number: 18200730002
Status: Excess
Reasons: Within airport runway clear zone

Arkansas

Military Family Housing
Eielson AFB
Eielson AR 99702
Landholding Agency: Air Force
Property Number: 18201110007
Status: Excess
Directions: Bldgs: 5258 & 5198
Reasons: Extensive deterioration

California

Garages 25001 thru 25100
Edwards AFB
Area A
Los Angeles CA 93524
Landholding Agency: Air Force
Property Number: 18200620003
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 00275
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200730003
Status: Unutilized
Reasons: Within airport runway clear zone, Extensive deterioration, Secured Area

Bldgs. 02845, 05331, 06790
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200740001
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 07173, 07175, 07980
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200740002
Status: Unutilized
Reasons: Secured Area

Bldg. 5308
Edwards AFB
Kern CA 93523
Landholding Agency: Air Force
Property Number: 18200810003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Facility 100
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200810004
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldgs. 1952, 1953, 1957, 1958
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820007
Status: Unutilized
Reasons: Secured Area

Bldgs. 1992, 1995
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820008
Status: Unutilized
Reasons: Secured Area

5 Bldgs.
Pt. Arena AF Station
101, 102, 104, 105, 108
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820019

Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 160, 161, 166
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820020
Status: Excess
Reasons: Secured Area, Extensive deterioration

8 Bldgs.
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820021
Status: Excess
Directions: 201, 202, 203, 206, 215, 216, 217, 218
Reasons: Secured Area, Extensive deterioration

7 Bldgs.
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820022
Status: Excess
Directions: 220, 221, 222, 223, 225, 226, 228
Reasons: Secured Area, Extensive deterioration

Bldg. 408
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820023
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 601 thru 610
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820024
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 611–619
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820025
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 620 thru 627
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820026
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 654, 655, 690
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820027
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 300, 387
Pt Arena Comm. Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820029
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 700, 707, 796, 797
Pt. Arena Comm. Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820030
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 748, 838
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820033
Status: Unutilized
Reasons: Secured Area

6 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200930001
Status: Unutilized
Directions: 355, 421, 1062, 1088, 1250, 1280
Reasons: Extensive deterioration

7 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200930002
Status: Unutilized
Directions: 2160, 2171, 2340, 2432, 2491, 2560, 5800
Reasons: Extensive deterioration

5 Bldgs.
Vandenberg AFB
Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 18200940005
Status: Unutilized
Directions: 708, 742, 955, 1836, 13403
Reasons: Secured Area, Extensive deterioration

14 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200940006
Status: Unutilized
Directions: 4158, 3936, 3942, 3947, 4314, 4318, 4256, 4120, 4103, 3871, 3873, 3887, 3919, 4133
Reasons: Extensive deterioration

Bldgs. 4320, 800
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200940007
Status: Unutilized
Reasons: Extensive deterioration

4 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200940008
Status: Unutilized
Directions: 4136, 5223, 5228, 5278
Reasons: Extensive deterioration

Bldgs. 1154, 2459, 5114
Beale AFB
Beale CA 95903
Landholding Agency: Air Force
Property Number: 18201010004
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 1213
Beale AFB
Beale CA 95903
Landholding Agency: Air Force
Property Number: 18201030002
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 411
Ft. MacAuthur Family Housing
San Pedro CA
Landholding Agency: Air Force
Property Number: 18201040004
Status: Unutilized
Reasons: Extensive deterioration

Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18201040009
Status: Unutilized
Reasons: Secured Area

37 Bldgs.
Beale AFB
Marysville CA 95901
Landholding Agency: Air Force
Property Number: 18201040014
Status: Unutilized
Directions: 4199, 4205, 4207, 4211, 4215, 4218, 4219, 4222, 4226, 4227, 4229, 4230, 4231, 4238, 4241, 4242, 4256, 4260, 4264, 4268, 4284, 4286, 4308, 4310, 4314, 4318, 4320, 4333, 4341, 4353, 4355, 4382, 4384, 4395, 4397, 4399, 4401
Reasons: Extensive deterioration

38 Bldgs.
Beale AFB
Marysville CA 95901
Landholding Agency: Air Force
Property Number: 18201040015
Status: Unutilized
Directions: 4415, 4417, 4457, 4467, 4475, 4496, 4534, 4598, 4600, 4603, 4605, 4618, 4620, 4634, 4636, 4639, 4641, 4659, 4661, 4664, 4666, 4675, 4677, 4691, 4693, 4703, 4705, 4708, 4710, 4717, 4719, 4724, 4725, 4726, 4727, 4732, 4734, 4522
Reasons: Extensive deterioration

11 Bldgs.
Beale AFB
Marysville CA 95901
Landholding Agency: Air Force
Property Number: 18201040016
Status: Unutilized
Directions: 5205, 5216, 5223, 5228, 5236, 5238, 5277, 5278, 5279, 5294, 5297
Reasons: Extensive deterioration

36 Bldgs.
Beale AFB
Marysville CA 95901
Landholding Agency: Air Force
Property Number: 18201040017
Status: Unutilized
Directions: 3873, 3887, 3919, 3936, 3942, 3947, 3961, 4075, 4103, 4105, 4115, 4118, 4119, 4120, 4122, 4133, 4136, 4137, 4142, 4145, 4148, 4151, 4157, 4158, 4161, 4166, 4171, 4178, 4179, 4181, 4184, 4185, 4189, 4193, 4197, 4198
Reasons: Extensive deterioration

Bldg. 7201
501 Payne Ave
Edwards AFB CA

Landholding Agency: Air Force
Property Number: 18201120046
Status: Underutilized
Reasons: Secured Area, Within airport runway clear zone

Bldgs. 2110 & 2111
Edwards AFB
Edwards AFB CA
Landholding Agency: Air Force
Property Number: 18201120047
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

Bldgs. 12 & 14
Jones Rd, Edwards AFB
Edwards AFB CA
Landholding Agency: Air Force
Property Number: 18201120048
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 3304
Beale AFB
Beale CA
Landholding Agency: Air Force
Property Number: 18201120049
Status: Unutilized
Reasons: Extensive deterioration

3 Bldgs.
Beale AFB
Beale CA
Landholding Agency: Air Force
Property Number: 18201120053
Status: Unutilized
Directions: 5705, 5706, 5707
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 459 and 646
Naval Base Coronado
Coronado CA 92135
Landholding Agency: Navy
Property Number: 77201120003
Status: Excess
Reasons: Secured Area, Extensive deterioration

Colorado

Bldg. 9038
U.S. Air Force Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18200920004
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 6980
U.S. Air Force Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18200940009
Status: Unutilized
Reasons: Secured Area

Bldgs. 6966, 6968, 6930, 6932
USAF Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18201010005
Status: Unutilized
Reasons: Secured Area

Bldg. 1413
Buckley AFB
Aurora CO
Landholding Agency: Air Force
Property Number: 18201020006
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

7 Bldgs.
U.S. Air Force Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18201030004
Status: Unutilized
Directions: 2330, 2331, 2332, 2333, 3190, 9020, 9035
Reasons: Secured Area

2 Bldgs.
N. Peterson Blvd.
Colorado Springs CO 80914
Landholding Agency: Air Force
Property Number: 18201040003
Status: Excess
Directions: 670, 1820
Reasons: Within 2000 ft. of flammable or explosive material, Other—legal constraints—leased from City

Florida

Bldg. 82
Air Force Range
Avon Park FL 33825
Landholding Agency: Air Force
Property Number: 18200840002
Status: Unutilized
Reasons: Contamination, Secured Area

Bldg. 202
Avon Park AF Range
Polk FL 33825
Landholding Agency: Air Force
Property Number: 18200930005
Status: Unutilized
Reasons: Extensive deterioration

Facility 47120
Cape Canaveral AFB
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18200940010
Status: Unutilized
Reasons: Secured Area

15 Bldgs.
Tyndall AFB
Bay FL 32403
Landholding Agency: Air Force
Property Number: 18201010006
Status: Unutilized
Directions: 129, 131, 138, 153, 156, 419, 743, 745, 1003, 1269, 1354, 1355, 1506, 6063, 6067
Reasons: Secured Area

4 Bldgs.
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18201010007
Status: Unutilized
Directions: 56621, 56629, 56632, 67901
Reasons: Secured Area

Bldgs. 1622, 60408, and 60537
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18201020007
Status: Unutilized
Reasons: Secured Area

13 Bldgs.
Tyndall AFB
Bay FL 32403
Landholding Agency: Air Force
Property Number: 18201020008
Status: Excess
Directions: B111, B113, B115, B205, B206, B501, B810, B812, B824, B842, B1027, B1257, and B8402
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 90023
Hurlburt Field
Hurlburt FL 32544
Landholding Agency: Air Force
Property Number: 18201030005
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 89002
Cape Canaveral AFS
Brevard FL 32920
Landholding Agency: Air Force
Property Number: 18201030006
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

9 Bldgs
Cape Canaveral AFS FL 32925
Landholding Agency: Air Force
Property Number: 18201110009
Status: Unutilized
Directions: Bldgs: 44606, 49942, 70650, 78710, 07702, 8801, 8806, 8814, 10751
Reasons: Secured Area

4 Bldgs
Cape Canaveral
Cape Canaveral FL 32925
Landholding Agency: Air Force
Property Number: 18201120025
Status: Excess
Directions: 5401, 5403, 7200, 60748
Reasons: Secured Area

10 Bldgs.
Tyndall AFB
Tyndall FL 32403
Landholding Agency: Air Force
Property Number: 18201120027
Status: Underutilized
Directions: 505, 729, 1013, 1015, 1016, 1476, 1701, 6014, 6016, 6020
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Bldgs. 6028 and 6030
Florida Ave
Tyndall FL 32403
Landholding Agency: Air Force
Property Number: 18201120028
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Extensive deterioration, Secured Area, Floodway

6 Bldgs.
Tyndall AFB
Tyndall FL
Landholding Agency: Air Force
Property Number: 18201120055
Status: Underutilized
Directions: B106, B124, B164, B180, B181, B182
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Extensive deterioration

10 Bldgs.
Tyndall AFB
Tyndall FL
Landholding Agency: Air Force

Property Number: 18201120057
Status: Underutilized
Directions: 505, 729, 1013, 1015, 1016, 1476, 1701, 6014, 6016, 6020
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Georgia

6 Cabins
QSRG Grassy Pond Rec. Annex
Lake Park GA 31636
Landholding Agency: Air Force
Property Number: 18200730004
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 101, 102, 103
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200810006
Status: Excess
Reasons: Extensive deterioration

Bldgs. 330, 331, 332, 333
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200810007
Status: Excess
Reasons: Extensive deterioration

Bldgs. 794, 1541
Moody AFB
Lowndes GA
Landholding Agency: Air Force
Property Number: 18200820012
Status: Unutilized
Reasons: Secured Area

Bldg. 970
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200840003
Status: Unutilized
Reasons: Secured Area

Bldg. 205
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200920005
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 104, 118, 739, 742, 973
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200920016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 134, 804, 841, 978
Moody AFB
Moody AFB GA 31699
Landholding Agency: Air Force
Property Number: 18201010008
Status: Underutilized
Reasons: Secured Area

Bldgs. 665 and 1219
Moody AFB
Moody AFB GA 31699
Landholding Agency: Air Force
Property Number: 18201020009
Status: Underutilized
Reasons: Secured Area

7 Bldgs.
Moody AFB
Moody GA 31699
Landholding Agency: Air Force
Property Number: 18201030007
Status: Unutilized
Directions: 112, 150, 716, 719, 757, 1220, 1718
Reasons: Secured Area

Guam

Bldg. 1094
AAFB Yigo
Yigo GU 96543
Landholding Agency: Air Force
Property Number: 18200830007
Status: Unutilized
Reasons: Extensive deterioration

15 Bldgs.
Andersen AFB
Yigo GU 96543
Landholding Agency: Air Force
Property Number: 18200920006
Status: Excess
Reasons: Secured Area

Bldgs. 72, 73, 74
Andersen AFB
Mount Santa Rosa GU
Landholding Agency: Air Force
Property Number: 18200920017
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 101, 102
Andersen AFB
Pots Junction GU
Landholding Agency: Air Force
Property Number: 18200920018
Status: Excess
Reasons: Extensive deterioration

Hawaii

Bldg. 1815
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200730005
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 1028, 1029
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200740006
Status: Unutilized
Reasons: Secured Area

Bldgs. 1710, 1711
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200740007
Status: Unutilized
Reasons: Secured Area

Bldg. 1713
Hickam AFB
Hickam HI
Landholding Agency: Air Force
Property Number: 18200830008
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 1843
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200920019
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 1716
RPUID
Wake Island HI
Landholding Agency: Air Force
Property Number: 18201010009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 12
Kokee AFS
Waimea HI
Landholding Agency: Air Force
Property Number: 18201010010
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 501
Hickam AFB
Hickam HI
Landholding Agency: Air Force
Property Number: 18201010011
Status: Unutilized
Reasons: Secured Area

6 Bldgs.
Kaena Point Satellite
Tracking Station
Honolulu HI
Landholding Agency: Air Force
Property Number: 18201010012
Status: Excess
Directions: 16, 18, 20, 21, 32, 33
Reasons: Extensive deterioration

Bldgs. 39 and 14111
Kaena Point Satellite Tracking Station
Honolulu HI 96792
Landholding Agency: Air Force
Property Number: 18201020010
Status: Excess
Reasons: Secured Area, Within 2,000 ft. of flammable or explosive material

Bldg. 00024
USA Field Station Kunia
Wahiawa HI 96786
Landholding Agency: Army
Property Number: 2120112,0006
Status: Unutilized
Directions: Next to warehouse, bldg. 25, SE corner of Kunia parking lot
Reasons: Secured Area, Extensive deterioration, Not accessible by road

Indiana

Bldg. 103
Grissom AFB
Peru IN 46970
Landholding Agency: Air Force
Property Number: 18200940011
Status: Excess
Reasons: Within 2,000 ft. of flammable or explosive material

Bldg. 18
Grissom AFB
Peru IN 46970
Landholding Agency: Air Force
Property Number: 18201020012
Status: Excess
Reasons: Within 2,000 ft. of flammable or explosive material

Iowa

Bldg 01110, Iowa Army Ammo
17575 State Highway 79
Middletown IA 52601
Landholding Agency: Army
Property Number: 2120112,0005

Status: Unutilized
Reasons: Secured Area, Within 2,000 ft. of flammable or explosive material, Extensive deterioration, Not accessible by road

Kansas

27 Bldgs.
McConnell AFB
Sedgwick KS 67210
Landholding Agency: Air Force
Property Number: 18201020013
Status: Excess
Directions: 2052, 2347, 2054, 2056, 2044, 2047, 2049, 2071, 2068, 2065, 2063, 2060, 2237, 2235, 2232, 2230, 2352, 2349, 2345, 2326, 2328, 2330, 2339, 2324, 2342, 2354, and 2333
Reasons: Secured Area

Louisiana

Barksdale Middle Marker
Bossier LA 71112
Landholding Agency: Air Force
Property Number: 18200730006
Status: Excess
Reasons: Extensive deterioration

TARS Sites 1–6
Morgan City LA 70538
Landholding Agency: Air Force
Property Number: 18201020014
Status: Unutilized
Reasons: Secured Area

6 Bldgs.
AFB
Barksdale LA
Landholding Agency: Air Force
Property Number: 18201110001
Status: Underutilized
Directions: Bldgs: 5163, 5175, 7227, 7266, 7321, 7322
Reasons: Extensive deterioration, Within 2,000 ft. of flammable or explosive material, Secured Area

Bldgs. 5745 and 7253
615 Davis Ave.
Barksdale LA
Landholding Agency: Air Force
Property Number: 18201120022
Status: Underutilized
Reasons: Extensive deterioration, Secured Area, Within 2,000 ft. of flammable or explosive material

Bldgs. 7253 & 7254
Barksdale AFB
Barksdale LA
Landholding Agency: Air Force
Property Number: 18201120035
Status: Underutilized
Reasons: Within 2,000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 7254
Barksdale AFB
Barksdale LA
Landholding Agency: Air Force
Property Number: 18201120056
Status: Underutilized
Reasons: Within 2,000 ft. of flammable or explosive material, Extensive deterioration

USACE Radio Tower Site
U.S. Army COE
Blanchard LA 71104
Landholding Agency: GSA
Property Number: 5420112,0008
Status: Surplus
GSA Number: 7–D–LA–564–N
Comments: Landlocked-—can only be accessible by crossing private property
Reasons: Not accessible by road

Maine

Facilities 1, 2, 3, 4
OTH–B Site
Moscow ME 04920
Landholding Agency: Air Force
Property Number: 18200730007
Status: Unutilized
Reasons: Within 2,000 ft. of flammable or explosive material

Bldgs. B496 and 497
Bangor Internatl Airport
Bangor ME 04401
Landholding Agency: Air Force
Property Number: 18201020015
Status: Unutilized
Reasons: Secured Area

Maryland

No. NA74
NSA
Annapolis MD 21402
Landholding Agency: Navy
Property Number: 7720112,0004
Status: Underutilized
Reasons: Secured Area, Floodway

Massachusetts

Bldg. 180
180 Guard Shack
Otis MA
Landholding Agency: Air Force
Property Number: 18201120040
Status: Underutilized
Reasons: Within airport runway clear zone, Extensive deterioration, Secured Area

Bldg. 191
191 Izzea St.
Otis ANGB MA
Landholding Agency: Air Force
Property Number: 18201120041
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 198
198 Izzea St.
Otis ANGB MA
Landholding Agency: Air Force
Property Number: 18201120042
Status: Underutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 201
201 Reilly St.
Otis MA
Landholding Agency: Air Force
Property Number: 18201120043
Status: Underutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3230
3230 Simpkins Rd.
Otis MA
Landholding Agency: Air Force
Property Number: 18201120044
Status: Underutilized
Reasons: Extensive deterioration

23 Bldgs.
USCG Air Station Cape Cod
Bourne MA 02542
Landholding Agency: Coast Guard
Property Number: 88201120004
Status: Excess
Directions: 5301, 5306, 5313, 5321, 5369, 5402, 5404, 5405, 5406, 5407, 5439, 5442, 5445, 5447, 5452, 5667, 5668, 5675, 5681, 5683, 5686
Reasons: Secured Area

Michigan

10 Bldgs.
Malmstorm AFB
Malmstorm MI
Landholding Agency: Air Force
Property Number: 18201120036
Status: Unutilized
Directions:130, 226, 248, 320, 370, 448, 471, 650, 1145, 1151
Reasons: Secured Area

5 Bldgs.
Malmstrom AFB
Malmstrom MI
Landholding Agency: Air Force
Property Number: 18201120037
Status: Unutilized
Directions: 1192, 1702, 1884, 2000, 4000
Reasons: Secured Area

6 Bldgs.
Alpena CRTC
Alpena MI
Landholding Agency: Air Force
Property Number: 18201120045
Status: Underutilized
Directions: 322, 323, 324, 403, 412, 413
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Mississippi

5 Bldgs
AFB
Keesler MS 39534
Landholding Agency: Air Force
Property Number: 18201110004
Status: Excess
Directions: Bldgs: B2804, B4203, B4812, B6903, B6918
Reasons: Secured Area

Bldg. 1809
Columbus AFB
Columbus MS 39710
Landholding Agency: Air Force
Property Number: 18201120030
Status: Excess
Reasons: Extensive deterioration, within 2000 ft. of flammable or explosive material

Montana

Bldgs. 1600, 1601
Malmstrom AFB
Cascade MT 59402
Landholding Agency: Air Force
Property Number: 18200920020
Status: Unutilized
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area

7 Bldgs. AFB
107 77th Street North
Malmstrom AFB
Malmstrom MT 59402–7540
Landholding Agency: Air Force
Property Number: 18201110002
Status: Underutilized
Directions: 581, 800, 1082, 1152, 1156, 1705, 3065
Reasons: Secured Area

Nebraska

Bldgs. 163, 402, 554

Offutt AFB
Offutt NE 68113
Landholding Agency: Air Force
Property Number: 18201030008
Status: Excess
Reasons: Secured Area

New Hampshire

Bldg. 152
Pease Internatl Tradeport
Newington NH 03803
Landholding Agency: Air Force
Property Number: 18200920007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 16
Pease Internatl Tradeport
Newington NH 03803
Landholding Agency: Air Force
Property Number: 18200930006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

Bldg. 256
Portsmouth Int'l Airport
Newington NH
Landholding Agency: Air Force
Property Number: 18201120038
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

New Jersey

Bldgs. 2609, 2611
Joint Base
McGuire NJ
Landholding Agency: Air Force
Property Number: 18201010013
Status: Unutilized
Reasons: Extensive deterioration

5 Bldgs.
Joint Base McGuire-Dix-Lakehurst
Trenton NJ 08641
Landholding Agency: Air Force
Property Number: 18201020016
Status: Unutilized
Directions: 1827, 1925, 3424, 3446, and 3449
Reasons: Secured Area, Extensive deterioration

New Mexico

Bldg. 1016
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200730008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 40, 841
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200820016
Status: Underutilized
Reasons: Secured Area

Bldgs. 436, 437
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200820017
Status: Underutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 20612, 29071, 37505
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200830010
Status: Unutilized
Reasons: Secured Area

Bldgs. 88, 89
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 312, 322
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830021
Status: Unutilized
Reasons: Secured Area

Bldg. 569
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830022
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 807, 833
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1245
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830024
Status: Unutilized
Reasons: Secured Area

5 Bldgs.
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200840004
Status: Unutilized
Directions: 1201, 1202, 1203, 1205, 1207
Reasons: Secured Area

5 Bldgs.
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200920008
Status: Unutilized
Directions: 71, 1187, 1200, 1284, 1285
Reasons: Secured Area

6 Bldgs.
Holloman AFB
Holloman AFB NM
Landholding Agency: Air Force
Property Number: 18200930007
Status: Unutilized
Directions: 920, 921, 922, 923, 924, 930
Reasons: Secured Area

Bldgs. 1113, 1127
Holloman AFB
Holloman AFB NM
Landholding Agency: Air Force
Property Number: 18200930008
Status: Unutilized
Reasons: Secured Area

Bldg. 30143
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200930009
Status: Excess
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Bldg. 1267, 1620
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200940013
Status: Unutilized
Reasons: Secured Area

Bldgs. 214, 851, 1199
Holloman AFB
Holloman AFB NM 88330
Landholding Agency: Air Force
Property Number: 18201010014
Status: Underutilized
Reasons: Secured Area

Bldg. 865
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18201030009
Status: Unutilized
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 790
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18201030013
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 880
1241 Moroni
Holloman NM 88330
Landholding Agency: Air Force
Property Number: 18201040001
Status: Unutilized
Reasons: Secured Area

Bldg. 825
Holloman AFB
Holloman NM 88330
Landholding Agency: Air Force
Property Number: 18201040002
Status: Unutilized
Reasons: Extensive deterioration

4 Bldgs.
Kirtland AFB
Kirtland NM
Landholding Agency: Air Force
Property Number: 18201120034
Status: Underutilized
Directions: 376, 614, 1905, 30101
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material, Extensive deterioration

North Dakota

Bldgs. 1612, 1741
Grand Forks AFB
Grand Forks ND 58205
Landholding Agency: Air Force
Property Number: 18200720023
Status: Unutilized

Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
4128 27th Ave.
Grand Forks ND 58203
Landholding Agency: Air Force
Property Number: 18201040012
Status: Unutilized
Directions: 120, 200, 250, 255, 300
Reasons: Within 2000 ft. of flammable or explosive material

Ohio

Boat House
2 Coast Guard Rd
Grand River OH 44045
Landholding Agency: Coast Guard
Property Number: 88201120005
Status: Excess
Reasons: Secured Area, Extensive deterioration

Station Opscenter
2 Coast Guard Rd.
Grand River OH 44045
Landholding Agency: Coast Guard
Property Number: 88201120006
Status: Excess
Reasons: Extensive deterioration, Secured Area

Storage Bldg.
2 Coast Guard Rd.
Grand River OH 44045
Landholding Agency: Coast Guard
Property Number: 88201120007
Status: Excess
Reasons: Secured Area, Extensive deterioration

Maintenance Shop
2 Coast Guard Rd.
Grand River OH 44045
Landholding Agency: Coast Guard
Property Number: 88201120008
Status: Excess
Reasons: Extensive deterioration, Secured Area

Oklahoma

3 Bldgs.
Altus AFB
Altus OK 73523
Landholding Agency: Air Force
Property Number: 18201040013
Status: Excess
Directions: 296, 444, 503
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

Control Tower Facility 163
626 Elam Road
Vance Air Force Base
Vance OK
Landholding Agency: Air Force
Property Number: 18201110006
Status: Excess
Reasons: Within airport runway clear zone, Secured Area

Bldg. 39, AGGN
500 North First Street
Altus OK
Landholding Agency: Air Force
Property Number: 18201120019
Status: Excess
Reasons: Secured Area

Bldg 415
605 N. Perimeter Rd
Altus OK 73523
Landholding Agency: Air Force
Property Number: 18201120020
Status: Excess
Reasons: Secured Area

7 Bldgs.
AGGN
Altus OK
Landholding Agency: Air Force
Property Number: 18201120021
Status: Excess
Directions: 296, 358, 374, 376, 377, 413, 445
Reasons: Secured Area

11 Bldgs.
4329 N. Corsair Ave
Tulsa Int'l Airport
Tulsa OK 74115
Landholding Agency: Air Force
Property Number: 18201120026
Status: Underutilized
Directions: 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812
Reasons: Secured Area, Within airport runway clear zone, Extensive deterioration

Facility 188
1065 Elam Road
Vance AFB
Enid OK
Landholding Agency: Air Force
Property Number: 18201120033
Status: Excess
Reasons: Within airport runway clear zone, Secured Area

Oregon

Bldg. 1001
ANG Base
Portland OR 97218
Landholding Agency: Air Force
Property Number: 18200820018
Status: Underutilized
Reasons: Secured Area, within 2000 ft. of flammable or explosive material

Puerto Rico

6 Bldgs.
USAG
Fort Buchanan PR 00934
Landholding Agency: Army
Property Number: 21201120001
Status: Excess
Directions: 1252, 1253, 1254, 1255, 1256, 1257
Reasons: Extensive deterioration

6 Bldgs.
USAG
Fort Buchanan PR 00934
Landholding Agency: Army
Property Number: 21201120002
Status: Excess
Directions: 1274, 1275, 1276, 1277, 1278, 1279
Reasons: Extensive deterioration

6 Bldgs.
USAG
Fort Buchanan PR 00934
Landholding Agency: Army
Property Number: 21201120003
Status: Excess
Directions: 1280, 1281, 1282, 1283, 1285, 1286
Reasons: Extensive deterioration

4 Bldgs.
USAG
Fort Buchanan PR 00934
Landholding Agency: Army
Property Number: 21201120004
Status: Excess
Directions: 1287, 1288, 1289, 1290
Reasons: Extensive deterioration

South Carolina

Bldgs. 19, 20, 23
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730009
Status: Underutilized
Reasons: Secured Area

Bldgs. 27, 28, 29
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730010
Status: Underutilized
Reasons: Secured Area

Bldgs. 30, 39
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730011
Status: Underutilized
Reasons: Secured Area

8 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200920021
Status: Unutilized
Directions: B14, B22, B31, B116, B218, B232, B343, B3403
Reasons: Secured Area

Bldg. B1626
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200930010
Status: Unutilized
Reasons: Secured Area, within 2000 ft. of flammable or explosive material

10 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200940014
Status: Unutilized
Directions: B16, B34, B122, B219, B220, B221, B403, B418, B428, B430
Reasons: Secured Area

5 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200940015
Status: Unutilized
Directions: B800, B900, B911, B1040, B1041
Reasons: Secured Area

7 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200940016
Status: Unutilized
Directions: B1702, B1707, B1708, B1804, B1813, B1907, B5226
Reasons: Secured Area

7 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201020017

Status: Unutilized
Directions: B1026, B400, B401, B1402, B1701, B1711, and B1720
Reasons: Secured Area

Bldgs. B40006 and B40009
Shaw AFB
Wedgefield SC 29168
Landholding Agency: Air Force
Property Number: 18201020018
Status: Unutilized
Reasons: Secured Area

Bldg. B411
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18201030010
Status: Excess
Reasons: Secured Area, within 2000 ft. of flammable or explosive material

25 Bldgs.
JB Charleston
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201040006
Status: Excess
Directions: 1501B, 1503A, 1503B, 1506A, 1508A, 1508B, 1512A, 1514A, 1520A, 1520B, 1529A, 1531A, 1531B, 1533A, 1533B, 1537A, 1539A, 1540A, 1540B, 1563A, 1563B, 1565B, 1576A, 1577A, 1577B
Reasons: Secured Area

20 Bldgs.
JB Charleston
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201040007
Status: Excess
Directions: 1505A, 1505B, 1506B, 1507B, 1510A, 1510B, 1514B, 1516A, 1516B, 1518B, 1532B, 1533B, 1538B, 1539B, 1575B, 1576B, 1578B, 1579B, 1580A, 1580B
Reasons: Secured Area

13 Bldgs.
JB Charleston
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201040008
Status: Excess
Directions: 1501A, 1507A, 1509A, 1517A, 1518A, 1533A, 1535A, 1538A, 1565A, 1575A, 1578A, 1579A, 1688A
Reasons: Secured Area

4 Bldgs.
JB AFB
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201040010
Status: Excess
Directions: 1515, 1530, 1536, 1571
Reasons: Secured Area

12 Bldgs.
JB Charleston
N. Charleston SC 29404
Landholding Agency: Air Force
Property Number: 18201040018
Status: Excess
Directions: 1512B, 1529B, 1537B, 1519A, 1519B, 1688B, 1690A, 1690B, 1509B, 1517B, 1521A, 1521B
Reasons: Secured Area

2 Bldgs.
Edwards AFB
Edwards SC 93524
Landholding Agency: Air Force
Property Number: 18201040019
Status: Excess
Directions: 1014, 1015
Reasons: Secured Area

B113
102 Patrol Rd.
Sumter SC
Landholding Agency: Air Force
Property Number: 18201120051
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

South Dakota

Bldg. 2306
Ellsworth AFB
Meade SD 57706
Landholding Agency: Air Force
Property Number: 18200740008
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 6927
Ellsworth AFB
Meade SD 57706
Landholding Agency: Air Force
Property Number: 18200830011
Status: Unutilized
Reasons: Secured Area, within 2000 ft. of flammable or explosive material

Tennessee

Bldgs. 250 & 506
PSXE (Mcghee Tyson Aprt)
320 Post Ave., McGhee Tyson ANG
Louisville TN
Landholding Agency: Air Force
Property Number: 18201120039
Status: Excess
Reasons: Extensive deterioration, Secured Area

Texas

Bldg. 1001
FNXC, Dyess AFB
Tye TX 79563
Landholding Agency: Air Force
Property Number: 18200810008
Status: Unutilized
Reasons: Extensive deterioration

5 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840005
Status: Unutilized
Directions: B–4003, 4120, B–4124, 4127, 4130
Reasons: Secured Area

4 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840006
Status: Unutilized
Directions: 7225, 7226, 7227, 7313
Reasons: Secured Area

4 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840007
Status: Unutilized
Directions: 8050, 8054, 8129, 8133
Reasons: Secured Area

5 Bldgs.
Dyess AFB
Abilene TX 79607
Landholding Agency: Air Force
Property Number: 18200840008
Status: Unutilized
Directions: B–9032, 9107, 9114, B–9140, 11900
Reasons: Secured Area

Bldg. B–4228
FNWZ Dyess AFB
Taylor TX 79607
Landholding Agency: Air Force
Property Number: 18200920009
Status: Unutilized
Reasons: Secured Area

Bldgs. B–3701, B–3702
FNWZ Dyess AFB
Pecos TX 79772
Landholding Agency: Air Force
Property Number: 18200920010
Status: Unutilized
Reasons: Secured Area

Bldgs. 1, 2, 3, 4
Tethered Aerostat Radar Site
Matagorda TX 77457
Landholding Agency: Air Force
Property Number: 18200920023
Status: Excess
Reasons: Secured Area

Bldg. FNXH 2001
Dyess AFB
Dyess AFB TX 79607
Landholding Agency: Air Force
Property Number: 18200930011
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

6 Bldgs.
Dyess AFB
Dyess AFB TX 79607
Landholding Agency: Air Force
Property Number: 18200930013
Status: Unutilized
Directions: FNWZ 7235, 7312, 7405, 8045, 8120, 9113
Reasons:Secured Area

4 Bldgs.
Dyess AFB
Dyess AFB TX
Landholding Agency: Air Force
Property Number: 18200940017
Status: Unutilized
Directions: FNWZ 5017, 5305, 6015, 6122
Reasons: Secured Area

Bldg. 351
Laughlin AFB
Del Rio TX 78840
Landholding Agency: Air Force
Property Number: 18201010016
Status: Unutilized
Reasons: Secured Area

Bldgs. 6115, 6126, 6127
Dyess AFB
Dyess TX 79607
Landholding Agency: Air Force
Property Number: 18201030011
Status: Underutilized
Reasons: Secured Area

8 Bldgs.
AFB
Sheppard TX 76311–2621
Landholding Agency: Air Force

Property Number: 18201110003
Status: Unutilized
Directions: Bldgs: 17, 19, 21, 147, 526, 726, 982, 1664
Reasons: Extensive deterioration

Bldg. 111
AFB
Goodfellow TX 76908
Landholding Agency: Air Force
Property Number: 18201110012
Status: Excess
Reasons: Secured Area

5 Bldgs.
Goodfellow AFB
Goodfellow TX
Landholding Agency: Air Force
Property Number: 18201120029
Status: Excess
Directions: 137, 139, 144, 320, 712
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area

Facility 6120 & 6122
Lackland AFB
Lackland TX
Landholding Agency: Air Force
Property Number: 18201120031
Status: Underutilized
Reasons: Secured Area, Extensive deterioration

3 Bldgs.
Lackland AFB
Lackland TX
Landholding Agency: Air Force
Property Number: 18201120032
Status: Underutilized
Directions: 6119, 6125, 6309
Reasons: Extensive deterioration, Secured Area

Virginia

12 Bldgs
Langley AFB
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18200920012
Status: Unutilized
Directions: 35, 36, 903, 905, 1013, 1020, 1033, 1050, 1066, 1067, 1069, 1075
Reasons: Floodway, Secured Area

Bldgs. 38, 52
Langley AFB
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18201010018
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 52, 568, 731
Langley AFB
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18201030012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Joint Base Langley Eustis
AFB
Ft. Eustis VA 23604
Landholding Agency: Air Force
Property Number: 18201110011
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 11 & 12
Langley AFB
Langley VA
Landholding Agency: Air Force
Property Number: 18201120052
Status: Underutilized
Reasons: Secured Area

Tract #01–101 & Tract #04–102
National Park Service
Yorktown VA 23690
Landholding Agency: Interior
Property Number: 61201120004
Status: Excess
Reasons: Extensive deterioration

Washington

Defense Fuel Supply Point
18 structures/21 acres
Mukilteo WA
Landholding Agency: Air Force
Property Number: 18200910001
Status: Unutilized
Reasons: Extensive deterioration

West Virginia

Bldgs. 102, 106, 111
Air National Guard
Martinsburg WV 25405
Landholding Agency: Air Force
Property Number: 18200920013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 101, 110
Air National Guard
Martinsburg WV 25405
Landholding Agency: Air Force
Property Number: 18200940018
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Wyoming

Bldg. 00012
Cheyenne RAP
Laramie WY 82009
Landholding Agency: Air Force
Property Number: 18200730013
Status: Unutilized
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area

Land

California

Facilities 99001 thru 99006
Pt Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820028
Status: Excess
Reasons: Secured Area

7 Facilities
Pt. Arena Comm. Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820031
Status: Excess
Directions: 99001, 99003, 99004, 99005, 99006, 99007, 99008
Reasons: Secured Area

Facilities 99002 thru 99014
Pt. Arena Water Sys Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820032
Status: Excess
Reasons: Secured Area

Florida

Defense Fuel Supply Point
Lynn Haven FL 32444
Landholding Agency: Air Force
Property Number: 18200740009
Status: Excess
Reasons: Floodway

Illinois

Annex
Scolt Radio Relay
Belleville IL 62221
Landholding Agency: Air Force
Property Number: 18201020011
Status: Unutilized
Reasons: Secured Area

Indiana

1.059 acres
Grissom AFB
Peru IN 46970
Landholding Agency: Air Force
Property Number: 18200940012
Status: Excess
Reasons: Within 2,000 ft. of flammable or explosive material

North Dakota

JFSE
4128 27th Ave.
Grand Forks ND 58203
Landholding Agency: Air Force
Property Number: 18201040011
Status: Unutilized
Reasons: Within 2,000 ft. of flammable or explosive material

Texas

Rattlesnake ESS
FNWZ, Dyess AFB
Pecos TX 79772
Landholding Agency: Air Force
Property Number: 18200920011
Status: Unutilized
Reasons: Secured Area

24 acres
Tethered Aerostate Radar Site
Matagorda TX 77457
Landholding Agency: Air Force
Property Number: 18200920022
Status: Excess
Reasons: Secured Area

FNXH 99100
Dyess AFB
Dyess AFB TX 79607
Landholding Agency: Air Force
Property Number: 18200930012
Status: Unutilized
Reasons: Within 2,000 ft. of flammable or explosive material

2.43 acre/0.36 acre
Dyess AFB
Dyess AFB TX 79563
Landholding Agency: Air Force
Property Number: 18200930014
Status: Unutilized
Directions: FNXL 99104, 99108, 99110, 99112/FNXM 99102, 99103, 99108
Reasons: Within airport runway clear zone

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Part III

Department of the Treasury

31 CFR Part 10
Regulations Governing Practice Before the Internal Revenue Service; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[TD 9527]

RIN 1545–BH01

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations governing practice before the Internal Revenue Service (IRS). The regulations affect individuals who practice before the IRS and providers of continuing education programs. The regulations modify the general standards of practice before the IRS and the standards with respect to tax returns.

DATES:

Effective Date. These regulations are effective on August 2, 2011.

Applicability Date: For dates of applicability, see §§ 10.0(b), 10.1(c), 10.2(b), 10.3(j), 10.4(f), 10.5(g), 10.6(n), 10.7(f), 10.8(d), 10.9(c), 10.20(c), 10.25(e), 10.30(e), 10.34(e), 10.36(c), 10.38(b), 10.50(e), 10.51(b), 10.53(e), 10.60(d), 10.61(c), 10.62(d), 10.63(f), 10.64(f), 10.65(c), 10.66(b), 10.69(c), 10.72(g), 10.76(e), 10.77(f), 10.78(d), 10.79(e), 10.80(b), 10.81(b), 10.82(h), and 10.90(c).

FOR FURTHER INFORMATION CONTACT: Matthew D. Lucey at (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations was previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1726. The collection of information in these regulations is in §§ 10.6 and 10.9. The total annual burden of this collection of information is an increase from the burden in the current regulations. This information is required in order for the IRS to ensure that individuals permitted to prepare tax returns are informed of the latest developments in Federal tax practice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law.

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury (the Secretary) to regulate the practice of representatives before the Treasury Department. The Secretary is authorized, after notice and an opportunity for a proceeding, to censure, suspend, or disbar from practice before the Treasury Department those representatives who are incompetent, disreputable, or who violate regulations prescribed under section 330 of title 31. The Secretary also is authorized to impose a monetary penalty against these individuals and the individuals' firms or other entities that employ them. Additionally, the Secretary may seek an injunction against these individuals under section 7408 of the Internal Revenue Code (Code).

The Secretary has published regulations governing the practice of representatives before the IRS in 31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230). These regulations authorize the IRS to act upon applications for enrollment to practice before the IRS; to make inquiries with respect to matters under Circular 230; to institute proceedings to impose a monetary penalty or to censure, suspend, or disbar a practitioner from practice before the IRS; to institute proceedings to disqualify appraisers; and to perform other duties necessary to carry out these functions.

Circular 230 has been amended periodically. The regulations were amended most recently on September 26, 2007 (TD 9359, 72 FR 54540), to modify various provisions relating to the general standards of practice. For example, the 2007 regulations established an enrolled retirement plan agent designation, modified the conflict of interest rules, limited the use of contingent fees by practitioners, and required public disclosure of OPR disciplinary decisions after the decisions become final.

Those final regulations, however, did not finalize the standards with respect to tax returns under § 10.34(a) and the definitions under § 10.34(e) because of the amendments to section 6694(a) of the Code made by the Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28, 121 Stat. 190. Rather, the IRS and the Treasury Department reserved § 10.34(a) and (e) in those final regulations and also simultaneously issued a notice of proposed rulemaking (REG–138637–07) in the **Federal Register** (72 FR 54621) proposing to conform the professional standards under § 10.34 of Circular 230 with the civil penalty standards under section 6694(a) as amended by the 2007 Act.

On October 3, 2008, the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Div. C. of Public Law 110–343, 122 Stat. 3765, again amended the standard of conduct that must be met to avoid imposition of the tax return preparer penalty under section 6694(a). The IRS and the Treasury Department published final regulations (TD 9436) in the **Federal Register** (73 FR 78430) implementing amendments to the tax return preparer penalties on December 22, 2008. To generally be consistent with the return preparer penalty regulations, these final regulations provide updated rules with respect to the standards for tax returns under § 10.34(a).

These final regulations also provide new rules governing the oversight of tax return preparers. Previously, an individual tax return preparer generally was not subject to the provisions in Circular 230 unless the tax return preparer was an attorney, certified public accountant, enrolled agent, or other type of practitioner identified in Circular 230. Prior to the issuance of these final regulations, any individual could prepare tax returns and claims for refund without meeting any qualifications or competency standards. A tax return preparer also used to be able to exercise the privilege of limited practice before the IRS pursuant to the rules in former § 10.7(c)(1)(viii) of Circular 230 and Revenue Procedure 81–38 (1981–2 CB 592). See § 601.601(d)(2)(ii)(*b*).

In June 2009, the IRS launched a review of tax return preparers with the intent to propose a comprehensive set of recommendations to ensure uniform and high ethical standards of conduct for all tax return preparers and to increase taxpayer compliance. As part of this effort, the IRS received input from a large and diverse community through numerous channels, including public forums, solicitation of written comments, and meetings with advisory groups.

The IRS made findings and recommendations in Publication 4832, "Return Preparer Review" (the Report), which was published on January 4, 2010. The Report recommends increased oversight of the tax return preparer industry through the issuance of regulations.

To implement recommendations made in the Report, the IRS issued final

regulations under section 6109 of the Code (TD 9501) published in the **Federal Register** (75 FR 60309) on September 30, 2010. The final regulations under section 6109 provide that, for returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's preparer tax identification number (PTIN) or such other number prescribed by the IRS in forms, instructions, or other appropriate guidance. The regulations also provide that the IRS is authorized to require through other guidance (as well as in forms and instructions) that tax return preparers apply for a PTIN or other prescribed identifying number, the regular renewal of PTINs or other prescribed identifying number, and the payment of user fees. The IRS also issued final regulations (TD 9503) establishing a user fee to apply for or renew a PTIN published in the **Federal Register** (75 FR 60316) on September 30, 2010.

On August 23, 2010, the Treasury Department and the IRS published in the **Federal Register** (75 FR 51713) a notice of proposed rulemaking (REG–138637–07) proposing amendments to Circular 230 based upon certain recommendations made in the Report. The proposed regulations provided that registered tax return preparers are practitioners under Circular 230 and described the process for becoming a registered tax return preparer, as well as the scope of a registered tax return preparer's practice before the IRS. Amendments were also proposed to § 10.30 regarding solicitation, § 10.36 regarding procedures to ensure compliance, and § 10.51 regarding incompetence and disreputable conduct. A public hearing was held on the proposed regulations on October 8, 2010. Written public comments responding to the proposed regulations were received. After consideration of the public comments, the proposed regulations are adopted as revised by this Treasury decision.

Plain Language Summary of the Requirements for Becoming a Registered Tax Return Preparer or Continuing Education Provider

Am I affected by this regulation?

If you are an attorney or certified public accountant, then the amendments to §§ 10.3, 10.4, 10.5, 10.7 and 10.9 of Circular 230 (rules regarding registered tax return preparers) do not affect you. If you are not an attorney or certified public accountant and you prepare, or assist in preparing, all or substantially all of a tax return or claim for refund for compensation, then you may be affected by this regulation.

Section 10.2(a)(8) of the final regulations clarifies that the definition of "tax return preparer" in Circular 230 is the same as the meaning in section 7701(a)(36) of the Code and 26 CFR 301.7701–15. If you only furnish typing, reproduction, or other mechanical assistance with respect to a tax return or a claim for refund, you are not a tax return preparer under Circular 230.

How am I affected by this regulation and how does this regulation work with other recently issued IRS guidance?

The final regulations, in part, provide details about: (1) The application process to become a registered tax preparer, (2) the renewal process to remain a registered tax return preparer, and (3) other rules that govern practice before the IRS that affect all practitioners.

Application Process

Generally, you must do the following to apply to become a registered tax return preparer: (1) Pass a one-time competency exam, (2) pass a suitability check, and (3) obtain a PTIN (and pay the amount provided in the PTIN User Fee regulations).

To allow tax return preparers a transition period to pass the competency examination and, because the competency examination will not be available until after these final regulations are published, Notice 2011–6 (2011–3 IRB 315), which was published on December 30, 2010, provides the following guidance to tax return preparers who obtain a PTIN (in accordance with the PTIN regulations) and pay the applicable user fee (set forth in the PTIN User Fee regulations) before the competency examination is offered:

Individuals who obtain a provisional PTIN before the competency examination is offered may prepare for compensation any tax return or claim for refund until December 31, 2013, as long as the individual renews their PTIN, passes a suitability check (when available), and pays the applicable user fee. After the examination is offered, only attorneys, certified public accountants, enrolled agents, and registered tax return preparers, or individuals defined in section 1.02(a) or (b) of Notice 2011–6 may obtain a PTIN.

The tax returns and claims for refund covered by the competency examination initially offered will be limited to individual tax returns (Form 1040 series tax returns and accompanying schedules). As provided in Notice 2011–6, individuals may certify that they do not prepare individual tax returns and, as a result, will not be required to pass this initial competency examination or become a registered tax return preparer at this time.

The process for becoming a registered tax return preparer is comparable to the existing process for enrolled agents. Enrolled agents must pass the Special Enrollment Examination and complete continuing education requirements. These regulations, however, do not change enrolled agents' status as practitioners under Circular 230.

Renewal Process

You must complete continuing education to maintain your status as a registered tax return preparer. A registered tax return preparer must annually renew their PTIN and pay a user fee every year. Generally, registered tax return preparers must complete a minimum of 15 credits of continuing education annually. This regulation specifies what constitutes continuing education. Registered tax return preparers must retain records of continuing education courses for four years.

If you prepare or assist in preparing all or substantially all of a tax return for compensation but do not sign the tax return, you are exempt from the competency examination and continuing education requirements if the requirements of section 1.02(a) of Notice 2011–6 are met. You must, however, renew your PTIN, pay the applicable PTIN user fee, and certify that the requirements of Notice 2011–6 are met.

Continuing Education Providers

You are subject to requirements in the final regulations. The final regulations provide requirements applicable to continuing education providers who provide continuing education programs to registered tax return preparers and enrolled agents. Continuing education providers must obtain and renew continuing education provider numbers and continuing education provider program numbers and pay any applicable fees.

Summary of Comments and Explanation of Revisions

The IRS received more than 50 written comments in response to the notice of proposed rulemaking. All of the comments were considered and are available for public inspection. Most of the comments that addressed the proposed regulations are summarized in this preamble. Some comments addressed other regulations or notices of proposed rulemaking and are not discussed in this preamble.

The scope of these rules is limited to practice before the IRS. These regulations do not change the existing authority of attorneys, certified public accountants, and enrolled agents to practice before the IRS under Circular 230 and do not alter or supplant ethical standards that might otherwise be applicable to these practitioners.

IRS Offices Administering and Enforcing Circular 230

To fully implement the return preparer initiative, the IRS announced that a new return preparer office was created to administer PTIN applications, competency testing, and continuing education. The IRS decided that an office dedicated solely to these matters will allow the IRS to best serve tax return preparers and taxpayers by providing efficiency and expertise in this area.

Concurrently, the Office of Professional Responsibility will continue to enforce the Circular 230 provisions relating to practitioner conduct and discipline. The Office of Professional Responsibility will continue to carry out its mission to interpret and apply the standards of practice for tax professionals in a fair and equitable manner. As discussed in the Report, a strong enforcement regime is a key component to increased oversight of the tax return preparer industry. Commentators on the proposed regulations also suggested that the return preparer initiative must be met with appropriate enforcement measures. The IRS recognizes that the Office of Professional Responsibility is central to the IRS' goal of maintaining high standards of ethical conduct for all practitioners and that the Office must operate independently from IRS functions enforcing Title 26 requirements.

The final regulations accommodate the internal structure by generally removing references to the Office of Professional Responsibility. The final regulations allow the flexibility to adjust responsibility appropriately between the offices as the return preparer initiative is implemented. The Commissioner may delegate necessary authorities to appropriate offices.

Definitions—Practice Before the Internal Revenue Service, Tax Return Preparer

The final regulations adopt the proposed amendments to § 10.2(a)(4), which clarify that either preparing a document or filing a document may constitute practice before the IRS. The final regulations also adopt the proposed amendments to § 10.2(a)(8), which clarify that the definition of "tax return preparer" in Circular 230 is the same as the meaning in section 7701(a)(36) of the Code and 26 CFR 301.7701–15.

Who May Practice

The final regulations adopt the proposed amendments to § 10.3(f), which establish a new "registered tax return preparer" designation. A registered tax return preparer is any individual so designated under § 10.4(c) who is not currently under suspension or disbarment from practice before the IRS. An individual who is a registered tax return preparer pursuant to this part is a practitioner authorized to practice before the IRS, subject to the limitations identified in these regulations. Some commentators stated that the term registered tax return preparer would confuse the public because it implies a high level of professional capability. As stated in the Report, the goal of the return preparer initiative is increased oversight of the tax return preparer industry and to institute standards for minimum competence. For those individuals who have passed a competency examination and have met continuing education requirements, the Treasury Department and the IRS conclude that the term "registered" is appropriate.

Some commentators requested that the IRS not include registered tax return preparers as individuals who may practice under proposed § 10.3. Representation is defined as "[a]cts performed on behalf of a taxpayer by a representative before the Internal Revenue Service." See 26 CFR 601.501(b)(13) (Conference and Practice Requirements). As discussed earlier in this preamble, practice before the IRS includes preparing or filing tax returns and other documents with the IRS. Thus, preparation of a tax return is practice before the IRS. Because registered tax return preparers are individuals who prepare all or substantially all of a tax return or claim for refund on behalf of a taxpayer for compensation, they practice before the IRS and must be included in § 10.3 of the final regulations.

The Treasury Department and the IRS received comments requesting clarification with respect to which forms registered tax return preparers are permitted to prepare. The IRS will prescribe by forms, instructions, or other appropriate guidance the tax returns and claims for refund registered tax return preparers are permitted to prepare after successfully completing the competency examination. Forms, instructions, or other appropriate guidance may also provide rules with respect to forms that may be prepared without completion of the competency examination. Notice 2011–6 permits individuals who prepare tax returns not covered by the competency examination to obtain a PTIN if certain requirements are met.

Registered tax return preparers also may represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS (including the Taxpayer Advocate Service) during an examination if the registered tax return preparer signed the tax return or claim for refund for the taxable year or period under examination. Consistent with the limited practice rights previously available to unenrolled return preparers under former § 10.7(c)(1)(viii), registered tax return preparers are not permitted to represent taxpayers, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel, or similar officers or employees of the IRS or the Treasury Department. A registered tax return preparer's authorization to practice under this part also does not include the authority to provide tax advice to a client or another person except as necessary to prepare a tax return, claim for refund, or other document intended to be submitted to the IRS.

Some commentators inquired as to whether the federally authorized tax practitioner privilege under section 7525 applies to communications between a taxpayer and a registered tax return preparer. The Treasury Department and the IRS have concluded that the federally authorized tax practitioner privilege generally does not apply to communications between a taxpayer and a registered tax return preparer because the advice a registered tax return preparer provides ordinarily is intended to be reflected on a tax return and is not intended to be confidential or privileged.

The conduct of a registered tax return preparer in connection with the preparation of the return, claim for refund, or other document, as well as any representation of the client during an examination, will be subject to the standards of conduct in Circular 230. Inquiries into possible misconduct and disciplinary proceedings relating to registered tax return preparer misconduct will be conducted under the provisions in Circular 230.

Numerous members of the tax return preparation industry submitted comments requesting that certain individuals be exempted from the requirements in the proposed regulations. Commentators suggested that tax return preparers who are

supervised by certain practitioners currently authorized to practice under Circular 230 should not be required to become registered tax return preparers if the supervising practitioner signs the tax return prepared in part by the supervised tax return preparer. Commentators reasoned that certain practitioners who sign tax returns are subject to, in addition to Circular 230, professional standards and oversight by state licensing authorities and other professional organizations that place responsibility for the tax return on the signing practitioner.

In Notice 2011–6, the Treasury Department and the IRS provided, pursuant to § 1.6019–2(h), that individuals who are not attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, enrolled actuaries, or registered tax return preparers will be eligible to obtain a PTIN and, thus, prepare, or assist in preparing, all or substantially all of a tax return or claim for refund for compensation in certain discrete circumstances. Section 1.02(a) of the notice permits certain individuals supervised by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary who signs the return or claim for refund prepared by the individual to obtain a PTIN. These individuals also are required to certify in their application to receive a PTIN that they are supervised by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary who signs the tax return or claim for refund and provide a supervising individual's PTIN or other number if prescribed by the IRS. These individuals may not sign any tax return they prepare or assist in preparing for compensation. If at any point, the individual is no longer supervised by the signing attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary, the individual must notify the IRS if prescribed in forms, instructions, or other appropriate guidance and will no longer be permitted to prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation under this exception. Because individuals meeting these requirements, as fully set forth in § 1.02(a) of Notice 2011–6, are permitted to obtain a PTIN, they are not required to become registered tax return preparers to obtain a PTIN.

Eligibility To Become an Enrolled Agent or Enrolled Retirement Plan Agent

The final regulations provide that an enrolled agent or enrolled retirement plan agent must be eighteen years old and obtain a PTIN to be eligible to practice before the IRS as an enrolled agent or enrolled retirement plan agent.

Section 10.4(d) of the final regulations also provides that a former employee who, by virtue of past service and technical experience in the IRS, may be granted enrollment as an enrolled agent or enrolled retirement plan agent if certain criteria are satisfied. Some commentators on the proposed regulations suggested that former IRS employees should not be granted enrollment because the IRS is not exempting, or "grandfathering," experienced unenrolled practitioners from the testing and continuing education requirements. This recommendation is not adopted because the IRS may easily check a former employee's IRS employment record to ensure the individual has the past service and technical experience for the scope of enrollment sought by the former employee.

Eligibility To Become a Registered Tax Return Preparer

The final regulations require that an individual must be eighteen years old, possess a current or otherwise valid PTIN or other prescribed identifying number, and pass a minimum competency examination to become a registered tax return preparer. Many commentators supported the IRS' effort to increase the overall competency of tax return preparers by implementing reasonable standards. The minimum age requirement included in the final regulations will assist the Treasury Department and the IRS in efficient tax administration by ensuring that registered tax return preparers have a minimum level of experience, knowledge, judgment, and maturity. Other categories of Circular 230 practitioners are generally subject to state requirements that result in the individual possessing a minimum level of experience, knowledge, judgment, and maturity.

The competency examination will be administered by, or administered under the oversight of, the IRS, similar to the special enrollment examinations for enrolled agents and enrolled retirement plan agents. Tax return preparers will be subject to suitability checks to determine whether the tax return preparer has engaged in disreputable conduct, which, at the time the application is filed with the IRS, could result in suspension or disbarment under Circular 230. An individual who has engaged in disreputable conduct is not eligible to become a registered tax return preparer.

Commentators requested that the IRS delay implementation of the testing requirement. The Treasury Department and the IRS did not adopt any delay in implementation of the testing requirement because it is currently anticipated that the examination to become a registered tax return preparer will not be available until after the effective date of these regulations. Notice 2011–6 provides guidance establishing transition rules explaining the steps individuals must take to prepare all or substantially all of a tax return or claim for refund while awaiting full implementation of the examination process. The IRS will provide administrative information about the competency examination to tax return preparers via appropriate channels, including the Tax Professionals page of the IRS website, *http://www.irs.gov/taxpros.*

Some commentators also requested that the Treasury Department and the IRS delay implementation of the continuing education requirements. In response to these concerns and to ensure the IRS has sufficient time to implement these requirements appropriately, the Treasury Department and the IRS announced that the implementation of the continuing education requirement will be postponed and that there will be no continuing education requirement at least during the first year of registration, which commenced on September 30, 2010. The IRS will provide administrative information about continuing education to tax return preparers via appropriate channels, including the Tax Professionals page of the IRS Web site, *http://www.irs.gov/taxpros.*

Procedures for Becoming or Renewing an Individual's Designation as a Registered Tax Return Preparer

Section 10.5 of the final regulations sets forth the applicable procedures related to becoming a registered tax return preparer, which generally are consistent with the procedures currently utilized for enrolled agents and enrolled retirement plan agents. The regulations provide that individuals who want to become a registered tax return preparer or renew their designation as a registered tax return preparer must utilize forms and comply with the procedures established and published by the IRS. The final regulations permit the IRS to change the procedures to apply to become a registered tax return preparer.

As a condition for consideration of an application, the IRS may conduct a Federal tax compliance check and

suitability check. The tax compliance check will be limited to an inquiry regarding whether the individual has filed all required individual or business tax returns (such as employment tax returns that might have been required to be filed by the applicant) and whether the individual has failed to pay, or make proper arrangements with the IRS for payment of, any Federal tax debts. The suitability check will be limited to an inquiry regarding whether the individual has engaged in any conduct that would justify suspension or disbarment of any practitioner under the provisions of this part, including whether the applicant has engaged in disreputable conduct.

The IRS may not designate an individual as a registered tax return preparer only if the results of the tax compliance or suitability check are sufficient to establish that the individual engaged in conduct subject to sanctions under Circular 230 at the time the individual seeks to become a registered tax return preparer or the individual does not pass the required competency examination or meet other established standards. If the individual does not pass the competency examination or the tax compliance or suitability check, the individual will not be designated as a registered tax return preparer. Pursuant to § 10.5(f) of these regulations, an applicant denied status as a registered tax return preparer will be informed in writing as to the reason(s) for any denial of the application. The applicant may file a written protest within 30 days after receipt of the denial. The written protest must be filed as prescribed by the Internal Revenue Service in forms, guidance, or other appropriate guidance. An individual who is initially denied status as a registered tax return preparer for failure pass a tax compliance check may reapply after the initial denial if the individual becomes current with respect to the individual's tax liabilities.

Once an individual is approved as a registered tax return preparer, the IRS will issue a registration card or certificate to each individual. The card or certificate will be in addition to any notification provided to an individual who obtains a PTIN. Registered tax return preparers must have both a valid registration card or certificate and a current and valid PTIN number to practice before the IRS.

Section 10.6 of the final regulations sets forth the procedures for renewing an individual's designation as a registered tax return preparer. Registered tax return preparers must renew their designation as prescribed in forms, instructions, or other appropriate guidance. A condition of renewal is the completion of the requisite number of continuing education hours by registered tax return preparers. Registered tax return preparers must complete 15 hours of continuing education during each registration year, with a minimum of three hours of Federal tax law updates, two hours of tax-related ethics and 10 hours of Federal tax law topics. The registration year is defined as each 12-month period that the registered tax return preparer is authorized to practice before the IRS.

Registered tax return preparers must maintain records with respect to the completion of the continuing education credit hours and to self-certify the completion of the continuing education credit at the time of renewal. These regulations require that a qualifying continuing education course enhance professional knowledge in Federal taxation or Federal tax related matters and be consistent with the Code and effective tax administration.

Section 10.6(f)(2)(iii) of the proposed regulations provided that the maximum continuing education credit allowed for instruction and preparation is four hours annually. The proposed regulations also removed the ability to receive hours for authoring articles, books, or other publications that was formerly allowed with respect to enrolled agents and enrolled retirement plan agents. The Treasury Department and the IRS did receive comments objecting to the reduction of maximum credit and the removal of the ability to receive credit for authoring publications. The comments stated that the rules would result in a lower quality of education and lower diversity.

In § 10.6(f)(2)(iii) of the final regulations, the Treasury Department and the IRS modified the proposed rules regarding the maximum credit allowed for instruction and preparation to allow enrolled agents and enrolled retirement plan agents to earn six hours annually. The final regulations allow registered tax return preparers to earn four hours annually. The Treasury Department and the IRS do not agree with the comments concerning receiving credit for authoring publications because the learning involved with authoring a publication does necessarily not equate to the knowledge derived from a continuing education program that is current and developed by an individual qualified in the relevant subject matter. Therefore, the final regulations remove the ability to receive hours for authoring articles, books, or other publications that was formerly allowed with respect to enrolled agents and enrolled retirement plan agents.

Sections 10.5(b) and 10.6(d)(7) of the final regulations provide that the IRS may charge a reasonable nonrefundable fee for each initial application and renewal of status as a registered tax return preparer submitted to the IRS. At the outset, the initial application fee refers to the initial PTIN user fee and the user fee applicable to any required competency examination. Similarly, a registered tax return preparer must renew a PTIN and pay the applicable user fee as prescribed by the IRS in forms, instructions, or other appropriate guidance. The IRS may in future regulations add or remove fees applicable to becoming a registered tax return preparer.

The Treasury Department and the IRS received numerous comments requesting that certain non-signing tax return preparers be exempt from the testing and continuing education requirements. Commentators reasoned that the testing and continuing education requirements are not necessary for non-signing tax return preparers who are supervised because a supervising practitioner is responsible for the accuracy of the underlying return and must generally comply with continuing professional education requirements and ethical standards. Comments also suggested that fees for the competency examination and continuing education for paraprofessionals and those assisting in return preparation would not be justified when the signing tax return preparer ultimately reviews, and is responsible for, the accuracy of the tax return. Overall, these comments suggested that the costs of requiring testing and continuing education for tax return preparers who are supervised by attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries outweighed the attendant benefits.

The Treasury Department and the IRS addressed these concerns in Notice 2011–6, which, as previously stated in this preamble, allows individuals who are not attorneys, certified public accountants, enrolled agents, or registered tax return preparers to obtain a PTIN provided the individual is supervised by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary who signs the tax return or claim for refund when the individual prepares all or substantially all of a tax return or claim for refund. Because individuals meeting these requirements, as fully set forth in § 1.02(a) of Notice 2011–6, are permitted to obtain a PTIN, they are not required to become registered tax return

preparers and, therefore, are not required to pass the competency examination or meet the continuing education requirements.

Some commentators requested that the Treasury Department and the IRS exempt student interns from the requirement to obtain a PTIN. These commentators suggested that the PTIN requirement would deter interest in tax accounting internships and make internship programs a money-losing proposition. The PTIN requirement applies to anyone who prepares all or substantially all of a tax return for compensation. If an intern does not receive compensation, the intern is not required to obtain a PTIN under the § 1.6109–2 regulations. If, however, an intern engages in tax return preparation activities that make the intern a tax return preparer for purposes of the § 1.6109–2 regulations and the intern is compensated for these activities, the intern must obtain a PTIN.

Continuing Education Providers

In § 10.9 of the proposed regulations, the Treasury Department and the IRS proposed a new requirement that continuing education providers obtain approval of each program to be qualified as a continuing education program. The proposed regulations also required providers of continuing education courses to maintain records and educational material concerning continuing education programs and the individuals who attended them. Section 10.9(a)(6) of the proposed regulations indicated that the IRS may charge a reasonable nonrefundable fee for each application for qualification as a qualified continuing education program.

The Treasury Department and the IRS received numerous comments requesting that the IRS reconsider the change in the continuing education approval process. Comments questioned why the IRS would require pre-approval of continuing education requirements when the number of individuals required to complete continuing education requirements is being significantly increased. Commentators suggested that the pre-approval process would be a substantial burden to continuing education providers and the IRS. In response to these comments, the Treasury Department and the IRS chose not to finalize the rules in proposed § 10.9 regarding pre-approval of individual continuing education programs.

Because the Treasury Department and the IRS are not finalizing the rules in proposed § 10.9 with respect to pre-approval of individual continuing education programs, § 10.9 of these final regulations adopts rules similar to the rules in former § 10.6(g) applicable to qualified sponsors. Under § 10.9 of the final regulations, continuing education providers must be qualified and must obtain a qualified continuing education provider number to be eligible to offer qualified continuing education. While continuing education providers initially will not be required to obtain the IRS' approval of each continuing education program offered, the regulations authorize the IRS to require such approval, at its discretion, in appropriate forms, instructions or other appropriate guidance. Under the final regulations, continuing education providers are required to obtain a continuing education program number for each qualified continuing education program offered. Although the IRS is not currently proposing charging providers a fee for obtaining a continuing education provider number or a continuing education program number, these regulations provide that providers must pay any user fee applicable to obtaining either number established in future regulations.

Section 10.9 of these final regulations allows those listed in former § 10.6(g) to be qualified continuing education providers. Commentators on the proposed regulations suggested that the Treasury Department and the IRS consider that some professional organizations have nationally recognized standards for approving continuing education programs that are comparable to the IRS standards in Circular 230. Specifically, the comments requested that continuing education providers approved by these organization's standards be exempted from the requirement to seek additional approval from the IRS with respect to each continuing education program.

The Treasury Department and the IRS agree with the commentators that there is merit in recognizing continuing education providers that have been approved previously by professional organizations with standards comparable to Circular 230. Accordingly, § 10.9 of these regulations includes as qualified continuing education providers those providers that are recognized and approved as providers of continuing education on subject matters within § 10.6(f) of these regulations by a qualifying organization that has minimum education standards comparable to those set forth in Circular 230. The IRS intends to identify in forms, instructions, or other appropriate guidance the professional organizations whose approval will allow a continuing education provider to be qualified within § 10.9.

Limited Practice Before the IRS, Return Preparation, and Application to Other Individuals

Section 10.3(f) of these regulations permits registered tax return preparers to represent a taxpayer during an examination if the registered tax return preparer prepared the return for the taxable period under examination. Therefore, the final regulations remove the limited practice authorization in former § 10.7(c)(1)(viii), which allowed an unenrolled tax return preparer to represent a taxpayer during an examination if that individual prepared the return for the taxable period under examination. Additionally, the final regulations remove former § 10.8 regarding customhouse brokers from Circular 230 and move the language in former § 10.7(e) to new § 10.8.

Section 10.8(a) of the final regulations provides that any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund must have a PTIN. Except as otherwise prescribed in forms, instructions, or other appropriate guidance, an individual must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer to obtain a preparer tax identification number. These rules are consistent with the final PTIN regulations under section 6109. An individual who is not an attorney, certified public accountant, enrolled agent, or registered tax return preparer who nevertheless prepares for compensation all or a substantial portion of a document (including tax returns and claims for refund) for submission to the IRS is engaged in practice before the IRS and is subject to the rules and standards of Circular 230.

Section 10.8(b) of the final regulations provides that any individual, whether or not the individual is a practitioner, may assist with the preparation of a tax return or claim for refund (provided the individual prepares less than substantially all of the tax return or claim for refund). This revision is consistent with the inclusion of registered tax return preparers as practitioners authorized to practice before the IRS and the practice rights available to these practitioners.

These regulations also establish a new § 10.8(c) regarding other individuals. Any individual who prepares for compensation all or a substantial portion of a document pertaining to a taxpayer's tax liability for submission to the IRS is subject to the duties and restrictions relating to practice before the IRS and may be sanctioned, after notice and opportunity for a conference,

for any conduct that would justify a sanction under § 10.50. An individual described in 26 CFR 301.7701–15(f) is not treated as having prepared all or a substantial portion of the document by reason of such assistance. For example, an individual who only furnishes typing, reproducing, or other mechanical assistance with respect to a document is not subject to the duties and restrictions relating to practice before the IRS.

Solicitation

Section 10.30(a)(1) of these regulations provides that a practitioner may not, with respect to any IRS matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, coercive, misleading, or deceptive statement or claim. In describing their designation, registered tax return preparers may not utilize the term "certified" or imply an employer/employee relationship with the IRS.

The proposed regulations provided that registered tax return preparers were permitted to use the term "designated as a registered tax return preparer with the Internal Revenue Service" when describing their designation. Some commentators expressed concern that the word "with" may imply a closer relationship with the IRS than exists, such as an employer-employee relationship. These commentators suggested using the term "by" instead. Accordingly, the IRS revised the language in final § 10.30(a)(1) to take into account this suggestion.

Standards With Respect to Tax Returns and Documents, Affidavits and Other Papers

After careful consideration, the IRS and the Treasury Department continue to conclude that the professional standards in § 10.34(a) generally should be consistent with the civil penalty standards in section 6694 for tax return preparers. As discussed in this preamble, the limited differences between the standards in § 10.34 and section 6694 arise from the different purposes served by those provisions and the different manner in which the two standards will be administered.

The standards with respect to tax returns in § 10.34(a) in the final regulations provide broader guidelines that are more appropriate for professional ethics standards. Under § 10.34(a)(1)(i) of the regulations, a practitioner may not willfully, recklessly, or through gross incompetence, sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that: (A) Lacks a reasonable basis; (B) is an unreasonable position as described in section 6694(a)(2) (including the related regulations and other published guidance); or (C) is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) (including the related regulations and other published guidance).

Under § 10.34(a)(1)(ii) of these regulations, a practitioner may not willfully, recklessly, or through gross incompetence, advise a client to take a position on a tax return or claim for refund, or prepare a portion of a tax return or claim for refund containing a position, that: (A) Lacks a reasonable basis; (B) is an unreasonable position as described in section 6694(a)(2) (including the related regulations and other published guidance); or (C) is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) (including the related regulations and other published guidance).

Commentators on proposed § 10.34 requested that the IRS clarify whether Notice 2009–5 (2009–3 IRB 309) applies for purposes of determining whether the tax return preparer prepared a return or claim for refund with an unreasonable position under § 10.34. An unreasonable position for purposes of § 10.34 is an unreasonable position as described in section 6694(a)(2) and related published guidance. Thus, Notice 2009–5 applies to determine whether the tax return preparer took an unreasonable position to the extent that it applies to the tax return preparer for purposes of section 6694.

Some commentators were concerned that a violation of section 6694 would translate to a per se violation of § 10.34. If the IRS, however, assesses a penalty against a practitioner under section 6694 and also refers the practitioner for possible discipline under Circular 230, an independent determination as to whether the practitioner engaged in willful, reckless, or grossly incompetent conduct subject to discipline under § 10.34(a) will be made before any disciplinary proceedings are instituted or any sanctions are imposed. Thus, a practitioner liable for a penalty under section 6694 is not automatically subject to discipline under § 10.34(a) of these regulations.

Several commentators recommended that the final regulations adopt the reasonable basis standard as the appropriate return position standard under § 10.34(a) rather than the civil penalty standards in section 6694(a) (the substantial authority and reasonable basis with adequate disclosure standards). These commentators similarly requested clarification providing that a practitioner is not subject to discipline under § 10.34(a) if the practitioner fails to adequately disclose a position on a return or claim for refund for which there is a reasonable basis. These comments are not adopted in final § 10.34(a). Proposed § 10.34(a)(1)(i)(A) and (a)(1)(ii)(A) established reasonable basis as the minimum threshold standard for practitioners because a practitioner acts unethically when the practitioner advises a taxpayer to take a position on a return or claim for refund that lacks a reasonable basis. The Treasury Department and the IRS continue to believe that a practitioner also acts unethically in violating the civil penalty standards under section 6694(a) (including when there is a reasonable basis for a position on a return or claim for refund but the practitioner does not adequately disclose the position within the meaning of § 1.6694–2(d)(3)) through willful, reckless, or grossly incompetent conduct. Accordingly, final § 10.34(a)(1)(i) and (a)(1)(ii) provide three independent standards of practitioner conduct and a practitioner who fails to satisfy any one of these three standards is subject to discipline under § 10.34(a).

Procedures To Ensure Compliance

Section 10.36(b) of these regulations provides that firm management with principal authority and responsibility for overseeing a firm's practice of preparing tax returns, claims for refunds and other documents filed with the IRS must take reasonable steps to ensure that the firm has adequate procedures in effect for purposes of complying with Circular 230. The Treasury Department and the IRS continue to believe that expansion of § 10.36 to require firm procedures for tax return preparation practice, in addition to the pre-existing application to covered opinions, will help ensure compliance and encourage firms to self-regulate. Firm responsibility is a critical factor in ensuring high quality advice and representation for taxpayers.

Authority To Accept a Practitioner's Consent To Sanction

Section 10.50 of the final regulations provides that the IRS has the authority to accept a practitioner's offer of consent to be sanctioned under § 10.50 in lieu of instituting or continuing a proceeding under § 10.60(a). Section 10.61(b)(2)

currently provides that the IRS may accept or decline such an offer from a practitioner. A provision similar to the provision added to these regulations was removed during a previous revision of Circular 230. Due to the removal, some stakeholders have expressed concern over whether the IRS has the authority to accept an offer of consent to sanction. The provision added in the final regulations is merely intended to clarify any ambiguity with respect to the authority of the IRS to accept an offer of consent to sanction in lieu of instituting or continuing a proceeding.

Incompetence and Disreputable Conduct

Section 10.51 of Circular 230 defines disreputable conduct for which a practitioner may be sanctioned. Section 6011(e)(3) of the Code, enacted by section 17 of the Worker, Homeownership, and Business Assistance Act of 2009, Public Law 111–92 (123 Stat. 2984, 2996) (Nov. 6, 2009), requires certain specified tax return preparers to file individual income tax returns electronically. Because the Treasury Department and the IRS believe that the failure to comply with this requirement is disreputable conduct, these regulations are amended to add a new paragraph in § 10.51 to address practitioners who fail to comply with this requirement. Under § 10.51(a)(16), disreputable conduct includes willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so by Federal tax laws (unless the failure is due to reasonable cause and not due to willful neglect). Some commentators stated that a failure to electronically file is only a procedural failure and suggested that it could only constitute disreputable conduct when coupled with an attempt to defraud the government. Commentators also suggested that a failure to electronically file should not constitute disreputable conduct because there are many valid reasons why a practitioner would not choose to electronically file tax returns.

The Treasury Department and the IRS, however, conclude that it is appropriate to include as disreputable conduct a tax return preparer's willful failure to electronically file tax returns subject to the mandatory electronic filing requirement. The IRS cannot permit tax return preparers to intentionally disregard the internal revenue laws and continue to practice before the IRS. Section 6011(e)(3) only applies to certain tax return preparers who file a specified number of returns per year and these tax return preparers need to be aware of the new electronic filing requirement. The Treasury Department and the IRS have issued final regulations (TD 9518) published in the **Federal Register** (76 FR 17521) on March 30, 2011, that provide exclusions from the electronic filing requirement. The exclusions in the final regulations include undue hardship waivers and administrative exemptions. *See* Rev. Proc. 2011–25 for additional information on hardship waivers and Notice 2011–16 for additional information on administrative exemptions. Moreover, tax return preparers are only subject to sanction under § 10.51(a)(16) of the final regulations for not electronically filing if such a failure is willful. Accordingly, § 10.51(a)(16) is sufficiently narrowly tailored to only apply to these tax return preparers who willfully fail to comply with the electronic filing requirement.

Under § 10.51(a)(17) of the final regulations, disreputable conduct also includes willfully preparing all or substantially all of, or signing as a compensated tax return preparer, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid PTIN or other prescribed identifying number. Section 10.51(a)(18) of these regulations states that it is disreputable conduct for a practitioner to willfully represent a taxpayer before an officer or employee of the IRS unless the practitioner is authorized to do so pursuant to Circular 230. These changes are consistent with the other revisions in these regulations and under section 6109.

Proceedings Against Appraisers

The regulations also contain amendments to § 10.60(b) relating to institution of proceedings against appraisers to better reflect the modifications made by section 1219 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780), and the enactment of the section 6695A penalty. The IRS may reprimand or institute a proceeding for disqualification against an appraiser assessed a penalty under sections 6694, 6695A, or 6701, among any other relevant penalty provisions, as long as it is determined that the appraiser acted willfully, recklessly, or through gross incompetence with respect to the proscribed conduct.

Appeal of Decision of Administrative Law Judge

These regulations amend § 10.77 to provide additional, clarifying information regarding the procedure for filing an appeal of an Administrative Law Judge's decision with respect to a proceeding under subpart D of Circular 230.

Records

Section 10.90 of these final regulations clarify that the roster requirements also pertain to registered tax return preparers and qualified continuing education programs.

Effective Date

These final regulations generally apply 60 days after the date the regulations are published in the **Federal Register**.

Special Analyses

Executive Order 12866, as supplemented by Executive Order 13563, provides that regulations must promote predictability and reduce uncertainty, and in developing regulations, agencies must take into account benefits and costs, both quantitative and qualitative. Specifically, agencies are directed, to the extent permitted by law, to propose or adopt regulations only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. This rule has been designated a "significant regulatory action" under section 3(f) of Executive Order 12866, inasmuch as it may adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. Accordingly, the rule has been reviewed by the Office of Management and Budget. The Regulatory Assessment prepared for this regulation is provided in this preamble under the heading "Regulatory Assessment Under E.O. 12866, as Supplemented by E.O. 13563."

It has been determined that a final regulatory flexibility analysis is required for this final regulation under 5 U.S.C. 604. This analysis is set forth later in this preamble under the heading "Final Regulatory Flexibility Analysis."

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to

identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Please see the Regulatory Assessment for a discussion of the budgetary impact of this final rule.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received.

A. Regulatory Assessment Under E.O. 12866, as Supplemented by E.O 13563

1. Statement of the Need for the Regulatory Action

Although the IRS has exercised its authority to regulate for attorneys, certified public accountants, and other specified tax professionals, regulations under Circular 230 currently do not apply to a critical group of tax professionals: Tax return preparers. As discussed in the Report, taxpayers' reliance on tax return preparers has grown steadily in recent decades. The number of taxpayers who prepared their own tax returns without assistance fell by more than two-thirds between 1993 and 2005. In fact, today, tax return preparers assist a majority of U.S. taxpayers in meeting their Federal tax filing obligations. In 2008 and 2009, for example, paid tax return preparers, including attorneys, certified public accountants, enrolled agents, and unenrolled tax return preparers, prepared almost 60 percent of all federal tax returns filed, including approximately 87 million Federal individual income tax returns. The IRS expects these numbers to increase in 2010 and the coming years.

Tax return preparers are not only responsible for assisting taxpayers in filing complete, timely, and accurate returns, but also help educate taxpayers about the tax laws, and facilitate electronic filing. Tax return preparers provide advice to taxpayers, identify items or issues for which the law or guidance is unclear, and inform taxpayers of the benefits and risks of positions taken on a tax return, and the tax treatment or reporting of items and transactions. The IRS and the Treasury Department recognize that the majority of tax return preparers serve the interests of their clients and the tax system by preparing complete and accurate returns.

The tax system is best served by tax return preparers who are ethical, provide good service, and are qualified. Recent government studies, including studies from the Government Accountability Office and the Treasury Inspector General for Tax Administration, see, for example, Government Accountability Office, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors,* GAO–06–563T (Apr. 4, 2006); Treasury Inspector General for Tax Administration, *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors,* Rept. # 2008–40–171 (Sept. 3, 2008), illustrate the losses incurred by both taxpayers and the system of Federal tax administration when tax return preparers fail to properly prepare tax returns. Additionally, many of the more than 500 public comments received by the IRS during the agency's review of the return preparer industry expressed concern for taxpayers, tax administration and the return preparer industry, all of whom are hurt when tax returns are not accurately prepared.

An overwhelming number of commentators (98 percent of the persons who offered comments on oversight and enforcement) supported increased government oversight of tax return preparers, particularly for individuals who are not attorneys, certified public accountants or others currently authorized to practice before the IRS. These commentators argued that taxpayers, the IRS and tax administration generally would benefit from the registration of tax return preparers. Eighty-eight percent of the persons who expressed an opinion on registering paid tax return preparers favor registration. Ninety percent of the persons who commented on testing and education favor minimum education or testing requirements for paid tax return preparers. And 98 percent of the persons who commented on quality and ethics favor establishment of quality and ethics standards for paid tax return preparers.

Because the IRS has not adopted a uniform set of regulations for tax return preparers, the amount of oversight of tax return professionals varies greatly depending on professional affiliations and the geographic area in which they practice. Most tax return preparers do not have to pass any government or professionally mandated competency requirement. Most tax return preparers are not required to participate in a specified program of continuing professional education. And the ethical rules found in Circular 230 currently are not applicable to all tax return preparers.

As such, the IRS recognizes the need to apply a uniform set of rules to offer taxpayers some assurance that their tax returns are prepared completely and accurately. Increasing the completeness and accuracy of returns would necessarily lead to increased compliance with tax obligations by taxpayers.

2. Potentially Affected Tax Returns

These regulations generally extend pre-existing regulations that apply to attorneys, certified public accountants and other specified tax professionals to tax return preparers, including currently unenrolled tax return preparers, who prepare all or substantially all of a tax return or claim for refund for compensation. The rules potentially apply to all returns prepared by tax return preparers regardless of the taxpayer. For example, the rules apply to self-employed tax return preparers who prepare individual tax returns for persons who have only wage and interest income. The IRS is authorized to extend the application of the rule to corporate and large partnership returns, which are prepared predominately by tax return preparers employed by large accounting firms. These examples are nonexclusive and the application or potential application of these rules is not limited to only those tax return preparers covered by the examples.

The current expansion of these regulations to currently unenrolled tax return preparers will impact individual taxpayers more than large corporate taxpayers.

3. An Assessment of Benefits Anticipated From the Regulatory Action

The primary benefit anticipated from these regulations is that they will improve the accuracy, completeness, and timeliness of tax returns prepared by tax return preparers. As illustrated in the recent government studies, including the IRS' recent review of the tax return preparer industry, inaccurate tax returns are costly both to taxpayers and the government. Inaccurate returns may affect the finances of taxpayers, who might overpay their respective share of taxes or fail to take advantage of available tax benefits. Inaccurate tax returns may also affect the U.S. government because of overpayments, underpayments and increased costs of enforcement and collection.

The regulations are expected to improve the accuracy, completeness, and timeliness of tax returns in a number of ways. First, requiring registered tax return preparers to demonstrate the necessary qualifications to provide a valuable service by successfully completing a government or professionally mandated competency examination and continued competence

by completing the specified continuing education credits annually will result in more competent and ethical tax return preparers who are well educated in the rules and subject matter. A more competent and ethical tax return preparer community will prevent costly errors, potentially saving taxpayers from unwanted problems and relieving the IRS from expending valuable examination and collection resources. Thus, regulations are critical to assisting the IRS curtail the activities of noncompliant and unethical tax return preparers.

Second, these regulations, in association with new and separate regulations under section 6109 requiring all individuals who prepare all or substantially all of a tax return for compensation to obtain a PTIN, are expected to improve the accuracy, completeness and timeliness of tax returns because they will help the IRS identify tax return preparers and the tax returns and claims for refund that they prepare, which will aid the IRS' oversight of tax return preparers, and to administer requirements intended to ensure that tax return preparers are competent, trained, and conform to rules of practice. Individuals who prepare all or substantially all of a tax return or claim for refund will be required to obtain a PTIN prescribed by the IRS and furnish the PTIN when the tax return preparer signs (as the tax return preparer) a tax return or claim for refund. Given the important role that tax return preparers play in Federal tax administration, the IRS has a significant interest in being able to accurately identify tax return preparers and monitor the tax return preparation activities of these individuals. These regulations, in conjunction with the final PTIN regulations, will enable the IRS to more accurately identify tax return preparers and improve the IRS' ability to associate filed tax returns and refund claims with the responsible tax return preparer.

Third, the regulations are expected to improve the accuracy of tax returns by providing that all registered tax return preparers are practicing before the IRS and, therefore, are practitioners subject to the ethical standards of conduct in Circular 230. This change will authorize the IRS to inquire into possible misconduct and institute disciplinary proceedings relating to registered tax return preparer misconduct under the provisions of Circular 230. A registered tax return preparer who is shown to be incompetent or disreputable, fails to comply with the provisions in Circular 230, or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client, is subject to censure, suspension, or disbarment from practice before the IRS, as well as a monetary penalty.

The availability of these sanctions will act as a deterrent to registered tax return preparers engaging in misconduct because disreputable or incompetent registered tax return preparers who are suspended or disbarred from practice will no longer be able to prepare tax returns, claims for refund, and other documents submitted to the IRS. Competent and ethical tax return preparers who are well educated in the rules and subject matter of their field can prevent costly errors, potentially saving a taxpayer from unwanted problems later on and relieving the IRS from expending valuable examination and collection resources.

The IRS and the Treasury Department expect that the largest marginal improvements in accuracy will be with regard to tax returns prepared by tax return preparers who previously were unregulated through the Circular 230 requirements. Unlike certified public accountants, attorneys, and enrolled agents, unenrolled tax return preparers generally are not subject to any form of testing, continuing professional education, or uniform ethical standards. The tax returns prepared by unenrolled tax return preparers may involve tax issues that are less complicated and smaller in amount than issues in tax returns prepared by other types of tax professionals. In addition, individual taxpayers may face a variety of complex tax issues, for which the advice of a qualified tax advisor will improve the accuracy on the return.

4. An Assessment of Costs Anticipated From the Regulatory Action

There are various costs anticipated from this regulatory action.

Cost category	Preliminary cost estimate
COMPETENCY EXAMINATION:	
• Costs to registered tax preparers: Costs associated with taking a minimum competency examination (including costs of examination, amount of time required to study for the exam, and any associated travel).	*Costs to Registered Tax Return Preparers:* The costs associated with competency examinations for registered tax preparers are currently unknown. The competency examination has not been developed and an examination vendor has not been selected. The cost of the examination and amount of time required to study for it, therefore, are unknown. The costs for any associated travel will depend on what locations the test is offered in and how close the applicant lives to those locations. While there is currently no vendor for the examination, it is expected that the vendor will offer the test in many locations across the United States and multiple locations outside the United States.
• Costs to vendors: User fee costs IRS will charge to recover the costs to third-party vendors who administer the registered tax return preparer competency examination.	*Costs to Vendors:* The vendor for the examination has not been selected so these fees cannot yet be determined.
• Costs to government: Costs associated with creating, administrating, and reviewing competency exams.	*Costs to Government:* These costs are currently unknown. The costs to the government will depend, in part, on which functions will be performed by a vendor. Also, the vendor may recover the vendor's associated costs through a separate fee charged by the vendor.
PTIN:	*Costs to Registered Tax Return Preparers and Certain Other Individuals Eligible to Receive a PTIN Under Notice 2011–6:*

Cost category	Preliminary cost estimate
• Costs to registered tax preparers: User fees for applying for a PTIN and renewing a PTIN.	The fees registered tax preparers and certain other individuals under Notice 2011–6 will face for applying for a PTIN and renewing a PTIN is $64.25 annually. Given that there are an estimated 800,000 to 1,200,000 individuals who will apply for or renew a PTIN annually, we estimate that the aggregate annual PTIN registration costs will be from $51 million to $77 million.
• Costs to vendors: User fee assessed by third-party vendor to administer the PTIN application and renewal process.	*Costs to Vendors:* The fee charged by the vendor is $14.25. The $14.25 fee reflects costs incurred by the vendor in processing a PTIN application or renewal. Given that there are an estimated 800,000 to 1,200,000 individuals who will apply for or renew a PTIN annually, we estimate that the aggregate annual PTIN registration costs will be from $11 million to $17 million.
• Costs to government: Administration of PTIN registration program.	*Costs to Government:* The $50 annual fee is expected to recover the $59,427,633 annual costs the government will face in its administration of the PTIN registration program. This fee includes: (1) The costs the government faces in administering registration cards or certificates for each registered tax preparer, (2) costs associated with prescribing by forms, instructions, or other guidance which forms and schedules registered tax preparers can sign for, and (3) tax compliance and suitability checks conducted by the government.
RECORDKEEPING:	
• Costs to continuing education providers: Recordkeeping requirements on continuing education providers to maintain records and educational material concerning these programs and the individuals who attend them.	*Costs to Continuing Education Providers:* $38,632,500 annual costs.
• Costs to registered tax preparers: Recordkeeping requirements on registered tax preparers to maintain records and educational materials regarding the completion of the required qualifying continuing education credits.	*Costs to Registered Tax Return Preparers:* $9,880,000 annual costs.
CONTINUING EDUCATION:	
• Costs to registered tax preparers: Completing continuing education coursework requirement.	*Costs to Registered Tax Return Preparers:* We do not have a cost estimate available for continuing education costs borne by the tax preparers. The cost of continuing education courses generally range from $20 to $300 per course.
• Costs to continuing education providers: Obtaining required numbers from the IRS.	*Costs to Continuing Education Providers:* Continuing education providers are not currently charged a fee for obtaining a provider number or program number.
FINGERPRINTING:	
• Costs to registered tax return preparers: Fingerprinting	*Costs to Registered Tax Return Preparers and Certain Other Individuals Eligible to Receive a PTIN Under Notice 2011–6:* The fees that will be imposed on registered tax return preparers and certain other individuals eligible to receive a PTIN under Notice 2011–6 for fingerprinting are not available because the vendor processing the fingerprinting check has not been selected.

Tax return preparers will incur costs associated with taking a minimum competency examination, including the cost of the examination, the amount of time required to study for the examination, and any associated travel depending on the proximity of tax return preparer to the test site location. Although it is anticipated that the vendor will offer the test at multiple locations in the United States and outside the United States, the vendor and the test locations have not been selected at this time. Future regulations will be proposed that address the costs to the government for creating, administering, and reviewing the examination and the user fee the IRS will charge to recover these costs. The third-party vendor who helps administer the registered tax return preparer competency examination also will charge a reasonable fee to take the registered tax return preparer examination and a reasonable fee to be fingerprinted.

Additionally, preparers are subject to user fees for applying for a PTIN and renewing the PTIN. Final regulations establish a $50 fee to apply for a PTIN. A third party vendor administers the PTIN application and renewal process and charges a $14.25 fee that is independent of the user fee charged by the government.

The PTIN user fee recovers the full cost to the government to administer the PTIN application and renewal program. The administration of the PTIN application and renewal program requires the use of IRS services, goods, and resources. For the PTIN application and renewal program to be self-sustaining, the IRS must charge a user fee to recover the costs of providing the special benefits associated with PTIN. A PTIN confers a special benefit because without a PTIN, a tax return preparer could not receive compensation for preparing all or substantially all of a

Federal tax return or claim for refund. This analysis is consistent with the current practice of charging a user fee on individuals seeking to become enrolled agents. Being an enrolled agent confers special benefits; and, therefore, the IRS currently charges a user fee on applicants seeking those special benefits.

Tax return preparers will incur recordkeeping and other costs associated with taking continuing education classes and any associated travel. Section 10.6 of these final regulations requires a registered tax return preparer to maintain records and educational materials regarding the completion of the required qualifying continuing education credits. The IRS and the Treasury Department estimate that there are 650,000 practitioners who will be affected by these recordkeeping requirements and the estimated annual burden per practitioner will vary from 30 minutes to one hour, depending on individual circumstances, with an estimated average of 54 minutes. The total annual costs resulting from these recordkeeping requirements will be $9,880,000 for all affected practitioners.

Continuing education providers will be subject to recordkeeping costs. Section 10.9 of these final regulations requires providers of qualifying continuing education programs to maintain records and educational material concerning these programs and the individuals who attend them. Approximately 500 continuing education providers are currently approved to provide continuing education programs for the approximately 50,000 enrolled agents, enrolled actuaries and enrolled retirement plan agents who must complete continuing education currently, but the IRS and the Treasury Department estimate that there are 2,250 continuing education providers who will be affected by these recordkeeping requirements and the estimated annual burden per continuing education provider will vary from 5 hours to 5,000 hours, depending on individual circumstances, with an estimated average of 500 hours. The estimated total annual costs resulting from these requirements will be $38,632,500 for all affected continuing education providers.

Currently, the cost to the tax return preparer of any particular continuing education course can vary greatly from free to hundreds of dollars. Many tax return preparation firms either provide continuing education courses at the firm to their employees for no charge or sponsor the cost of external courses for their employees. Other tax return preparers, however, will have to personally pay the cost of each continuing education course, which generally ranges anywhere from $20 to $300 per course depending on whether the continuing education provider offers the course in person, online, or over the phone. Tax return preparers also may incur additional costs if they travel to attend continuing education programs. These costs may include the time to travel to the program, transportation, lodging and incidentals.

Entities may be directly affected by the competency examination, PTIN and continuing education costs if they choose to pay any or all of the user fees or expenses for their employees. Some individuals and entities also may lose sales and profits while preparers are studying and sitting for the examination or taking the continuing education courses. Finally, individual tax return preparers and entities that employ individuals who prepare tax returns may need to close or change their business model if all, or a majority, of their employees cannot satisfy the necessary qualifications and competency requirements. The IRS and the Treasury Department believe that only a small percentage of tax return preparers will need to close or change their business model based upon these rules.

5. An Assessment of Costs and Benefits of Potential Alternatives

The IRS and the Treasury Department considered various alternatives in determining the best ways to implement proposed changes to the regulation of tax return preparers. In order to place the costs and benefits of the final rule in context, E.O. 12866 requires a comparison between the final rule, a baseline of what the world would look like without the final rule, and reasonable alternatives to the proposed rule.

i. Baseline Scenario

Under a baseline scenario, the current ethical standards in Circular 230 would continue to apply only to attorneys, certified public accountants, enrolled agents, and other practitioners who prepare tax returns and claims for refund, but not to unenrolled tax return preparers. Also, any unenrolled tax return preparer under this baseline scenario would be able to prepare and sign tax returns and claims for refund without passing an examination to establish competence or satisfying continuing education requirements.

Remaining under the current rules regarding tax return preparers would eliminate the benefits of the rule described in section A3 of this preamble. For example, under the baseline, OPR would not be authorized to institute disciplinary proceedings seeking sanctions against unenrolled tax return preparers.

Continuing to authorize any individual to prepare tax returns and claims for refund for compensation without passing an examination or taking continuing education courses also would eliminate any costs associated with the rule described in section A4 of this preamble. Tax return preparers, however, would still potentially be subject to user fees for obtaining a PTIN and renewing the PTIN if other Treasury Department and IRS regulations specifically prescribed those fees.

ii. Alternative One

The first alternative that was considered is to require all tax return preparers to comply with the ethical standards in Circular 230, but not to require any tax return preparer to pass an examination and complete continuing education courses. Under this alternative, the provisions of the rule clarifying that tax return preparers are subject to the ethical rules in Circular 230 would remain intact, but all of the other changes would not be adopted.

The benefits resulting from this alternative would likely be less than the benefits resulting from these regulations because tax return preparers would not need to meet a minimum competency level and keep educated and up-to-date on Federal tax issues. The most significant drawback to this alternative is the potential loss of these benefits and the benefits that result from monitoring the return preparation activities of tax return preparers generally. Under this alternative, however, tax return preparers would not incur the majority of costs that exist under the regulations.

iii. Alternative Two

A second alternative is to require tax return preparers who are not currently authorized to practice before the IRS to apply for such authorization with the IRS, satisfy annual continuing education requirements, and meet certain ethical standards, but not to pass a minimum competency examination. This alternative is identical to the regulations other than requiring certain preparers to successfully pass an examination administered by, or under the oversight of, the IRS.

The benefits resulting from this alternative are more comparable to the benefits in the regulations than under alternative one. Nevertheless, the lack of an examination would not be as

effective in ensuring that tax return preparers are qualified to obtain professional credentials and practice before the IRS. Tax return preparers under this alternative would incur all of the same costs that are in the regulations other than the costs associated with taking the examination.

iv. Alternative Three

A third alternative is to "grandfather in" unenrolled tax return preparers who have accurately and competently prepared tax returns for a certain amount of years. This alternative is the same as the rules in the regulations other than authorizing some unenrolled return preparers who have a specified amount of prior experience preparing tax returns and claims for refund to continue to prepare and sign returns without passing a minimum competency examination.

The benefits resulting from this alternative would likely be less than the benefits resulting from these regulations because the IRS and the Treasury Department believe a minimum level of competency needs to be assured through examination. Additionally, this alternative is not as likely to promote the same taxpayer confidence in the tax return preparation community as the regulations, which may, in turn, influence taxpayers when choosing a tax return preparer. Tax return preparers under this alternative would incur all of the same costs that are in the regulations except certain unenrolled preparers would avoid the costs associated with taking the examination.

v. Alternative Four

A fourth alternative is to require all tax return preparers, regardless of whether the tax return preparer is supervised, to complete the competency examination and continuing education requirements. This alternative is identical to the proposed regulations, which proposed requiring all unenrolled tax return preparers to meet the examination and education requirements.

Numerous commentators suggested that the costs of requiring testing and continuing education for tax return preparers who are supervised by attorneys, certified public accountants and enrolled agents outweighed the attendant benefits. After fully considering these comments, the IRS decided that the best alternative was not requiring testing and continuing education for tax return preparers who are employed by law firms, certified public accounting firms and certain other recognized firms and are supervised by attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents and enrolled actuaries who sign the returns that these individuals prepare.

B. Final Regulatory Flexibility Analysis

When an agency promulgates a final regulation that follows a required notice of proposed rulemaking, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency "to prepare a final regulatory flexibility analysis." A final regulatory flexibility analysis must, pursuant to 5 U.S.C. 604(a), contain the five elements listed in this final regulatory flexibility analysis. Section 605 of the RFA provides an exception to this requirement if the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. See 5 U.S.C. 601(3) through (6). The IRS and the Treasury Department conclude that the final regulations will impact a substantial number of small entities and the economic impact will be significant. As a result, a regulatory flexibility analysis is required.

1. Statement of the Need for and Objectives of The Proposed Rule

Tax return preparers are critical to ensuring compliance with the Federal tax laws and are an important component in the IRS' administration of those laws. More than eighty percent of U.S. taxpayers use a tax return preparer or consumer tax return preparation software to help prepare and file tax returns. Most tax return preparers are currently not subject to the ethical rules governing practice before the IRS and do not have to pass any competency requirement established by the government or a professional organization. After completing a comprehensive six-month review of tax return preparers, which included receiving input through public forums, solicitation of written comments, and meetings with advisory groups, the IRS concluded that there is a need for increased oversight of the tax return preparer industry.

The principal objective of the regulations is to increase oversight of tax return preparers and to provide guidance to tax return preparers about the new requirements imposed on them under Circular 230. These regulations implement higher standards for the tax return preparer community with the goal of significantly enhancing protections and service for taxpayers, increasing confidence in the tax system, and resulting in greater long-term compliance with the tax laws.

Specifically, the regulations clarify that a registered tax return preparer is a practitioner practicing before the IRS and thereby is subject to the ethical rules in Circular 230. The regulations require a registered tax return preparer to demonstrate the necessary qualifications and competency to advise and assist other persons in the preparation of all or substantially all of a tax return or claim for refund.

2. Summaries of the Significant Issues Raised in the Public Comments Responding to the Initial Regulatory Flexibility Analysis and of the Agency's Assessment of the Issues, and a Statement of Any Changes to the Rule as a Result of the Comments

The IRS did not receive specific comments from the public responding to the initial regulatory flexibility analysis in these final regulations. The IRS did receive comments from the public on the proposed amendments to 31 CFR part 10. A summary of the comments is set forth elsewhere in this preamble, along with the Treasury Department's and the IRS' assessment of the issues raised in the comments and descriptions of any revisions resulting from the comments.

3. Description and Estimate of the Number of Small Entities Subject to the Rule

The regulations affect individuals currently working as paid tax return preparers, individuals who want to become designated as a registered tax return preparer under the new oversight rules in Circular 230, and those small entities that are owned by or employ paid preparers. Only individuals, not businesses, can practice before the IRS or become a registered tax return preparer. Thus, the economic impact of these regulations on any small entity generally will be a result of an unenrolled individual owning a small business or on a small business that otherwise employs unenrolled paid return preparers.

The appropriate North American Industry Classification System (NAICS) codes for tax return preparers relate to tax preparation services (NAICS code 541213) and other accounting services (NAICS code 541219). Entities identified under these codes are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than $7 million or $8.5 million, respectively. The IRS estimates that approximately seventy to eighty percent of the individuals subject to these

regulations are paid preparers operating as or employed by small entities.

4. Description of the Projected Reporting, Recordkeeping and Related Requirements of the Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

The IRS estimates that there are approximately 600,000 to 700,000 unenrolled tax return preparers who are currently not attorneys, certified public accountants, or enrolled agents and who will seek status as a registered tax return preparer. Under the regulations, tax return preparers who become registered tax return preparers are subject to a recordkeeping requirement within the meaning of the Paperwork Reduction Act because they are required to maintain records and educational materials regarding their satisfaction of the qualifying continuing education requirements. These recordkeeping requirements do not require any specific professional skills other than general recordkeeping skills already needed to own and operate a small business or to competently act as a tax return preparer. It is estimated that practitioners will annually spend approximately 30 minutes to one hour in maintaining the required records, depending on individual circumstances.

The estimated 2,250 providers of qualifying continuing education programs will be required to maintain records and educational material concerning these programs and the persons who attended them. These continuing education providers will annually spend approximately five minutes per attendee per program maintaining the required records.

As previously discussed in section A4 of this preamble, the rule contains a number of other compliance requirements not subject to the Paperwork Reduction Act. These include the costs tax return preparers incur to take a competency examination, costs for continuing education classes, and other incidental costs and user fees. Small entities may be directly affected by these costs if they choose to pay any or all of these fees for their employees. In some cases, small entities may lose sales and profits while their employees prepare for and take the examination or participate in continuing education courses. Finally, some small entities that employ individuals who prepare tax returns may need to alter their business model if a significant number of their employees cannot satisfy the necessary qualifications and competency requirements. The IRS and the Treasury Department believe that only a small percentage of small entities, if any, may need to cease doing business or radically change their business model due to these rules.

5. A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting Any Alternative Adopted in the Final Rule and Why Other Significant Alternatives Affecting the Impact on Small Entities That the Agency Considered Were Rejected

The Treasury Department and the IRS have considered alternatives to the final regulations at multiple points. These final regulations are, in large measure, an outgrowth of, and in part carry out, the Report, which extensively reviewed different approaches to improving how the IRS oversees and interacts with tax return preparers. As part of the Report, the IRS received a large volume of comments on the oversight and enforcement of tax return preparers from all interested parties, including tax professional groups representing large and small entities, Federal and state organizations, IRS advisory groups, software vendors, individual return preparers, and the public. The input received from this large and diverse community overwhelmingly expressed support for the requirements proposed in the Report.

In concert with this tremendous public support for increased IRS oversight of tax return preparers, the IRS and the Treasury Department considered various alternatives in determining the best ways to implement proposed changes to the regulation of paid preparers. These alternatives included:

(1) Requiring all tax return preparers to comply with the ethical standards in Circular 230 or a code of ethics similar to Circular 230, but not requiring any tax return preparers to demonstrate their qualifications and competency;

(2) Requiring tax return preparers who are not currently authorized to practice before the IRS to apply for authorization with the IRS, satisfy annual continuing education requirements, and meet certain ethical standards, but not to pass a minimum competency examination;

(3) Requiring all tax return preparers who are not currently authorized to practice before the IRS to pass a minimum competency examination and meet other requirements, but "grandfather in" tax return preparers who have accurately and competently prepared tax returns for a certain number of years; and

(4) Requiring all unenrolled tax return preparers to complete testing and continuing education requirements.

The proposed regulations proposed that all unenrolled tax return preparers must complete testing and continuing education requirements. Many commentators on the proposed regulations expressed support for efforts to increase the oversight of tax return preparers, particularly for those who are not attorneys, certified public accountants, or other individuals previously authorized to practice before the IRS. As discussed in this preamble, many commentators requested, however, that the IRS exempt individuals who prepare tax returns under the supervision of Circular 230 practitioners from the requirements of these regulations. These commentators were concerned that unnecessary time and cost would be incurred with respect to the testing and continuing education requirements for individuals who do not sign tax returns but prepare them under the supervision of a practitioner ultimately responsible for the tax return. In response to these comments, the IRS published Notice 2011–6, generally allowing individuals to obtain PTINs if the individuals are employed by law firms, certified public accounting firms and certain other recognized firms and who are supervised by attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents and enrolled actuaries who sign the returns that these individuals prepare. This step taken by the IRS will minimize the economic impact of these regulations on many small entities in which attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, or enrolled actuaries supervise and sign tax returns prepared individuals who are not attorneys, certified public accountants, or enrolled agents.

The IRS also received comments objecting to the rule in the proposed regulations requiring continuing education providers to obtain continuing education program approval from the IRS for each continuing education program offered. In response to these comments the IRS, the IRS eliminated such a requirement. This step taken by the IRS will minimize the economic impact of these regulations on some small entities that offer continuing education programs. These regulations do require continuing education providers to obtain a continuing education provider number and a continuing education provider program

number. Although the IRS is not currently proposing charging providers a fee to obtain a continuing education provider number or a continuing education provider program number, these regulations provide that the payment of any applicable user fee established in future regulations is required to obtain either number.

The Treasury Department and the IRS are not aware of any additional steps that the IRS could take to minimize the economic impact on small entities that would be consistent with the objectives of these final regulations. These regulations do not impose any more requirements on small entities than are necessary to effectively administer the internal revenue laws. Further, the regulations do not subject small entities to requirements that are not also applicable to larger entities covered by the regulations. After considering the alternatives and the input provided through the public comment process, the IRS and the Treasury Department concluded that the provisions of the final regulations are necessary for sound tax administration and are the best way to increase oversight of all paid preparers. The testing requirements in the rules will ensure that tax return preparers pass a minimum competency examination to obtain their professional credentials, while the continuing education requirements will help ensure that tax return preparers remain current on Federal tax law and continue to expand their tax knowledge. The extension of the rules in Circular 230 to registered tax return preparers will require all practitioners to meet certain ethical standards and allow the IRS to suspend or otherwise discipline tax return preparers who engage in unethical or disreputable conduct. Accordingly, the implementation of the qualification and competency standards in these rules is expected to increase taxpayer compliance, ensure uniformity, and allow taxpayers to be confident that the tax return preparers to whom they turn for assistance are knowledgeable, skilled and ethical.

Drafting Information

The principal author of these regulations is Matthew D. Lucey of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 31 CFR Part 10

Accountants, Administrative practice and procedure, Lawyers, Reporting and recordkeeping requirements, Taxes.

Adoption of Amendments to the Regulations

Accordingly, 31 CFR part 10 is amended to read as follows:

PART 10—PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

■ **Paragraph 1.** The authority citation for 31 CFR part 10 is revised to read as follows:

Authority: Sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 et seq.; 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 321; 31 U.S.C. 330; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949–1953 Comp., p. 1017.

■ **Par. 2.** Section 10.0 is revised to read as follows:

§ 10.0 Scope of part.

(a) This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, registered tax return preparers, and other persons representing taxpayers before the Internal Revenue Service. Subpart A of this part sets forth rules relating to the authority to practice before the Internal Revenue Service; subpart B of this part prescribes the duties and restrictions relating to such practice; subpart C of this part prescribes the sanctions for violating the regulations; subpart D of this part contains the rules applicable to disciplinary proceedings; and subpart E of this part contains general provisions relating to the availability of official records.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 3.** Section 10.1 is revised to read as follows:

§ 10.1 Offices.

(a) *Establishment of office(s).* The Commissioner shall establish the Office of Professional Responsibility and any other office(s) within the Internal Revenue Service necessary to administer and enforce this part. The Commissioner shall appoint the Director of the Office of Professional Responsibility and any other Internal Revenue official(s) to manage and direct any office(s) established to administer or enforce this part. Offices established under this part include, but are not limited to:

(1) The Office of Professional Responsibility, which shall generally have responsibility for matters related to practitioner conduct and discipline, including disciplinary proceedings and sanctions; and

(2) An office with responsibility for matters related to authority to practice before the Internal Revenue Service, including acting on applications for enrollment to practice before the Internal Revenue Service and administering competency testing and continuing education.

(b) Officers and employees within any office established under this part may perform acts necessary or appropriate to carry out the responsibilities of their office(s) under this part or as otherwise prescribed by the Commissioner.

(c) *Acting.* The Commissioner will designate an officer or employee of the Internal Revenue Service to perform the duties of an individual appointed under paragraph (a) of this section in the absence of that officer or employee or during a vacancy in that office.

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 4.** Section 10.2 is amended by revising paragraphs (a)(4) and (a)(5), adding paragraph (a)(8), and revising paragraph (b) to read as follows:

§ 10.2 Definitions.

(a) * * *

(4) *Practice before the Internal Revenue Service* comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.

(5) *Practitioner* means any individual described in paragraphs (a), (b), (c), (d), (e), or (f) of § 10.3.

* * * * *

(8) *Tax return preparer* means any individual within the meaning of section 7701(a)(36) and 26 CFR 301.7701–15.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 5.** Section 10.3 is amended by:

■ 1. Revising paragraphs (d)(3) and (e)(3);

■ 2. Redesignating paragraphs (f), (g), (h), and (i) as paragraphs (g), (h), (i), and (j) respectively;

■ 3. Adding new paragraph (f); and

■ 4. Revising newly designated paragraph (j).

The revisions and additions read as follows:

§ 10.3 Who may practice.

* * * * *

(d) * * *

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (d)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and registered tax return preparers.

(e) * * *

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (e)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled actuaries, and registered tax return preparers.

(f) *Registered tax return preparers.* (1) Any individual who is designated as a registered tax return preparer pursuant to § 10.4(c) of this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(2) Practice as a registered tax return preparer is limited to preparing and signing tax returns and claims for refund, and other documents for submission to the Internal Revenue Service. A registered tax return preparer may prepare all or substantially all of a tax return or claim for refund of tax. The Internal Revenue Service will prescribe by forms, instructions, or other appropriate guidance the tax returns and claims for refund that a registered tax return preparer may prepare and sign.

(3) A registered tax return preparer may represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service (including the Taxpayer Advocate Service) during an examination if the registered tax return preparer signed the tax return or claim for refund for the taxable year or period under examination. Unless otherwise prescribed by regulation or notice, this right does not permit such individual to represent the taxpayer, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel or similar officers or employees of the Internal Revenue Service or the Treasury Department. A registered tax return preparer's authorization to practice under this part also does not include the authority to provide tax advice to a client or another person except as necessary to prepare a tax return, claim for refund, or other document intended to be submitted to the Internal Revenue Service.

(4) An individual who practices before the Internal Revenue Service pursuant to paragraph (f)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries.

* * * * *

(j) *Effective/applicability date.* This section is generally applicable beginning August 2, 2011.

■ **Par. 6.** Section 10.4 is revised to read as follows:

§ 10.4 Eligibility to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Enrollment as an enrolled agent upon examination.* The Commissioner, or delegate, will grant enrollment as an enrolled agent to an applicant eighteen years of age or older who demonstrates special competence in tax matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, who possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(b) *Enrollment as a retirement plan agent upon examination.* The Commissioner, or delegate, will grant enrollment as an enrolled retirement plan agent to an applicant eighteen years of age or older who demonstrates special competence in qualified retirement plan matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, who possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(c) *Designation as a registered tax return preparer.* The Commissioner, or delegate, may designate an individual eighteen years of age or older as a registered tax return preparer provided an applicant demonstrates competence in Federal tax return preparation matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, or otherwise meets the requisite standards prescribed by the Internal Revenue Service, possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(d) *Enrollment of former Internal Revenue Service employees.* The Commissioner, or delegate, may grant enrollment as an enrolled agent or enrolled retirement plan agent to an applicant who, by virtue of past service and technical experience in the Internal Revenue Service, has qualified for such enrollment and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part, under the following circumstances:

(1) The former employee applies for enrollment on an Internal Revenue Service form and supplies the information requested on the form and such other information regarding the experience and training of the applicant as may be relevant.

(2) The appropriate office of the Internal Revenue Service provides a detailed report of the nature and rating of the applicant's work while employed by the Internal Revenue Service and a recommendation whether such employment qualifies the applicant technically or otherwise for the desired authorization.

(3) Enrollment as an enrolled agent based on an applicant's former employment with the Internal Revenue Service may be of unlimited scope or it may be limited to permit the presentation of matters only of the particular specialty or only before the particular unit or division of the Internal Revenue Service for which the applicant's former employment has qualified the applicant. Enrollment as an enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service will be limited to permit the presentation of matters only with respect to qualified retirement plan matters.

(4) Application for enrollment as an enrolled agent or enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service must be made within three years from the date of separation from such employment.

(5) An applicant for enrollment as an enrolled agent who is requesting such enrollment based on former employment with the Internal Revenue Service must have had a minimum of five years continuous employment with the Internal Revenue Service during which the applicant must have been

regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to income, estate, gift, employment, or excise taxes.

(6) An applicant for enrollment as an enrolled retirement plan agent who is requesting such enrollment based on former employment with the Internal Revenue Service must have had a minimum of five years continuous employment with the Internal Revenue Service during which the applicant must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to qualified retirement plan matters.

(7) For the purposes of paragraphs (d)(5) and (6) of this section, an aggregate of 10 or more years of employment in positions involving the application and interpretation of the provisions of the Internal Revenue Code, at least three of which occurred within the five years preceding the date of application, is the equivalent of five years continuous employment.

(e) *Natural persons.* Enrollment or authorization to practice may be granted only to natural persons.

(f) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 7.** Section 10.5 is revised to read as follows:

§ 10.5 Application to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Form; address.* An applicant to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer must apply as required by forms or procedures established and published by the Internal Revenue Service, including proper execution of required forms under oath or affirmation. The address on the application will be the address under which a successful applicant is enrolled or registered and is the address to which all correspondence concerning enrollment or registration will be sent.

(b) *Fee.* A reasonable nonrefundable fee may be charged for each application to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer. See 26 CFR part 300.

(c) *Additional information; examination.* The Internal Revenue Service may require the applicant, as a condition to consideration of an application, to file additional information and to submit to any written or oral examination under oath or otherwise. Upon the applicant's written request, the Internal Revenue Service will afford the applicant the opportunity to be heard with respect to the application.

(d) *Compliance and suitability checks.* (1) As a condition to consideration of an application, the Internal Revenue Service may conduct a Federal tax compliance check and suitability check. The tax compliance check will be limited to an inquiry regarding whether an applicant has filed all required individual or business tax returns and whether the applicant has failed to pay, or make proper arrangements with the Internal Revenue Service for payment of, any Federal tax debts. The suitability check will be limited to an inquiry regarding whether an applicant has engaged in any conduct that would justify suspension or disbarment of any practitioner under the provisions of this part on the date the application is submitted, including whether the applicant has engaged in disreputable conduct as defined in § 10.51. The application will be denied only if the results of the compliance or suitability check are sufficient to establish that the practitioner engaged in conduct subject to sanctions under §§ 10.51 and 10.52.

(2) If the applicant does not pass the tax compliance or suitability check, the applicant will not be issued an enrollment or registration card or certificate pursuant to § 10.6(b) of this part. An applicant who is initially denied enrollment or registration for failure to pass a tax compliance check may reapply after the initial denial if the applicant becomes current with respect to the applicant's tax liabilities.

(e) *Temporary recognition.* On receipt of a properly executed application, the Commissioner, or delegate, may grant the applicant temporary recognition to practice pending a determination as to whether status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer should be granted. Temporary recognition will be granted only in unusual circumstances and it will not be granted, in any circumstance, if the application is not regular on its face, if the information stated in the application, if true, is not sufficient to warrant granting the application to practice, or the Commissioner, or delegate, has information indicating that the statements in the application are untrue or that the applicant would not otherwise qualify to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer. Issuance of temporary recognition does not constitute either a designation or a finding of eligibility as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer, and the temporary recognition may be withdrawn at any time.

(f) *Protest of application denial.* The applicant will be informed in writing as to the reason(s) for any denial of an application. The applicant may, within 30 days after receipt of the notice of denial of the application, file a written protest of the denial as prescribed by the Internal Revenue Service in forms, guidance, or other appropriate guidance. A protest under this section is not governed by subpart D of this part.

(g) *Effective/applicability date.* This section is applicable to applications received August 2, 2011.

■ **Par. 8.** Section 10.6 is revised to read as follows:

§ 10.6 Term and renewal of status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Term.* Each individual authorized to practice before the Internal Revenue Service as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer will be accorded active enrollment or registration status subject to renewal of enrollment or registration as provided in this part.

(b) *Enrollment or registration card or certificate.* The Internal Revenue Service will issue an enrollment or registration card or certificate to each individual whose application to practice before the Internal Revenue Service is approved. Each card or certificate will be valid for the period stated on the card or certificate. An enrolled agent, enrolled retirement plan agent, or registered tax return preparer may not practice before the Internal Revenue Service if the card or certificate is not current or otherwise valid. The card or certificate is in addition to any notification that may be provided to each individual who obtains a preparer tax identification number.

(c) *Change of address.* An enrolled agent, enrolled retirement plan agent, or registered tax return preparer must send notification of any change of address to the address specified by the Internal Revenue Service within 60 days of the change of address. This notification must include the enrolled agent's, enrolled retirement plan agent's, or registered tax return preparer's name, prior address, new address, tax identification number(s) (including preparer tax identification number), and the date the change of address is effective. Unless this notification is sent, the address for purposes of any correspondence from the appropriate Internal Revenue Service office responsible for administering this part shall be the address reflected on the practitioner's most recent application

for enrollment or registration, or application for renewal of enrollment or registration. A practitioner's change of address notification under this part will not constitute a change of the practitioner's last known address for purposes of section 6212 of the Internal Revenue Code and regulations thereunder.

(d) *Renewal*—(1) *In general.* Enrolled agents, enrolled retirement plan agents, and registered tax return preparers must renew their status with the Internal Revenue Service to maintain eligibility to practice before the Internal Revenue Service. Failure to receive notification from the Internal Revenue Service of the renewal requirement will not be justification for the individual's failure to satisfy this requirement.

(2) *Renewal period for enrolled agents.* (i) All enrolled agents must renew their preparer tax identification number as prescribed by forms, instructions, or other appropriate guidance.

(ii) Enrolled agents who have a Social Security number or tax identification number that ends with the numbers 0, 1, 2, or 3, except for those individuals who received their initial enrollment after November 1, 2003, must apply for renewal between November 1, 2003, and January 31, 2004. The renewal will be effective April 1, 2004.

(iii) Enrolled agents who have a social security number or tax identification number that ends with the numbers 4, 5, or 6, except for those individuals who received their initial enrollment after November 1, 2004, must apply for renewal between November 1, 2004, and January 31, 2005. The renewal will be effective April 1, 2005.

(iv) Enrolled agents who have a social security number or tax identification number that ends with the numbers 7, 8, or 9, except for those individuals who received their initial enrollment after November 1, 2005, must apply for renewal between November 1, 2005, and January 31, 2006. The renewal will be effective April 1, 2006.

(v) Thereafter, applications for renewal as an enrolled agent will be required between November 1 and January 31 of every subsequent third year as specified in paragraph (d)(2)(i), (d)(2)(ii), or (d)(2)(iii) of this section according to the last number of the individual's Social Security number or tax identification number. Those individuals who receive initial enrollment as an enrolled agent after November 1 and before April 2 of the applicable renewal period will not be required to renew their enrollment before the first full renewal period following the receipt of their initial enrollment.

(3) *Renewal period for enrolled retirement plan agents.* (i) All enrolled retirement plan agents must renew their preparer tax identification number as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(ii) Enrolled retirement plan agents will be required to renew their status as enrolled retirement plan agents between April 1 and June 30 of every third year subsequent to their initial enrollment.

(4) *Renewal period for registered tax return preparers.* Registered tax return preparers must renew their preparer tax identification number and their status as a registered tax return preparer as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(5) *Notification of renewal.* After review and approval, the Internal Revenue Service will notify the individual of the renewal and will issue the individual a card or certificate evidencing current status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(6) *Fee.* A reasonable nonrefundable fee may be charged for each application for renewal filed. See 26 CFR part 300.

(7) *Forms.* Forms required for renewal may be obtained by sending a written request to the address specified by the Internal Revenue Service or from such other source as the Internal Revenue Service will publish in the Internal Revenue Bulletin (see 26 CFR 601.601(d)(2)(ii)(*b*)) and on the Internal Revenue Service webpage (*http://www.irs.gov*).

(e) *Condition for renewal: continuing education.* In order to qualify for renewal as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer, an individual must certify, in the manner prescribed by the Internal Revenue Service, that the individual has satisfied the requisite number of continuing education hours.

(1) *Definitions.* For purposes of this section—

(i) *Enrollment year* means January 1 to December 31 of each year of an enrollment cycle.

(ii) *Enrollment cycle* means the three successive enrollment years preceding the effective date of renewal.

(iii) *Registration year* means each 12-month period the registered tax return preparer is authorized to practice before the Internal Revenue Service.

(iv) The *effective date of renewal* is the first day of the fourth month following the close of the period for renewal described in paragraph (d) of this section.

(2) *For renewed enrollment as an enrolled agent or enrolled retirement plan agent*—(i) *Requirements for enrollment cycle.* A minimum of 72 hours of continuing education credit, including six hours of ethics or professional conduct, must be completed during each enrollment cycle.

(ii) *Requirements for enrollment year.* A minimum of 16 hours of continuing education credit, including two hours of ethics or professional conduct, must be completed during each enrollment year of an enrollment cycle.

(iii) *Enrollment during enrollment cycle*—(A) *In general.* Subject to paragraph (e)(2)(iii)(B) of this section, an individual who receives initial enrollment during an enrollment cycle must complete two hours of qualifying continuing education credit for each month enrolled during the enrollment cycle. Enrollment for any part of a month is considered enrollment for the entire month.

(B) *Ethics.* An individual who receives initial enrollment during an enrollment cycle must complete two hours of ethics or professional conduct for each enrollment year during the enrollment cycle. Enrollment for any part of an enrollment year is considered enrollment for the entire year.

(3) *Requirements for renewal as a registered tax return preparer.* A minimum of 15 hours of continuing education credit, including two hours of ethics or professional conduct, three hours of Federal tax law updates, and 10 hours of Federal tax law topics, must be completed during each registration year.

(f) *Qualifying continuing education*—(1) *General*—(i) *Enrolled agents.* To qualify for continuing education credit for an enrolled agent, a course of learning must—

(A) Be a qualifying continuing education program designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics); and

(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

(ii) *Enrolled retirement plan agents.* To qualify for continuing education credit for an enrolled retirement plan agent, a course of learning must—

(A) Be a qualifying continuing education program designed to enhance professional knowledge in qualified retirement plan matters; and

(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

(iii) *Registered tax return preparers.* To qualify for continuing education credit for a registered tax return preparer, a course of learning must—

(A) Be a qualifying continuing education program designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics); and

(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

(2) *Qualifying programs*—(i) *Formal programs.* A formal program qualifies as a continuing education program if it—

(A) Requires attendance and provides each attendee with a certificate of attendance;

(B) Is conducted by a qualified instructor, discussion leader, or speaker (in other words, a person whose background, training, education, and experience is appropriate for instructing or leading a discussion on the subject matter of the particular program);

(C) Provides or requires a written outline, textbook, or suitable electronic educational materials; and

(D) Satisfies the requirements established for a qualified continuing education program pursuant to § 10.9.

(ii) *Correspondence or individual study programs (including taped programs).* Qualifying continuing education programs include correspondence or individual study programs that are conducted by continuing education providers and completed on an individual basis by the enrolled individual. The allowable credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution. Such programs qualify as continuing education programs only if they—

(A) Require registration of the participants by the continuing education provider;

(B) Provide a means for measuring successful completion by the participants (for example, a written examination), including the issuance of a certificate of completion by the continuing education provider;

(C) Provide a written outline, textbook, or suitable electronic educational materials; and

(D) Satisfy the requirements established for a qualified continuing education program pursuant to § 10.9.

(iii) *Serving as an instructor, discussion leader or speaker.* (A) One hour of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader, or speaker at an educational program that meets the continuing education requirements of paragraph (f) of this section.

(B) A maximum of two hours of continuing education credit will be awarded for actual subject preparation time for each contact hour completed as an instructor, discussion leader, or speaker at such programs. It is the responsibility of the individual claiming such credit to maintain records to verify preparation time.

(C) The maximum continuing education credit for instruction and preparation may not exceed four hours annually for registered tax return preparers and six hours annually for enrolled agents and enrolled retirement plan agents.

(D) An instructor, discussion leader, or speaker who makes more than one presentation on the same subject matter during an enrollment cycle or registration year will receive continuing education credit for only one such presentation for the enrollment cycle or registration year.

(3) *Periodic examination.* Enrolled Agents and Enrolled Retirement Plan Agents may establish eligibility for renewal of enrollment for any enrollment cycle by—

(i) Achieving a passing score on each part of the Special Enrollment Examination administered under this part during the three year period prior to renewal; and

(ii) Completing a minimum of 16 hours of qualifying continuing education during the last year of an enrollment cycle.

(g) *Measurement of continuing education coursework.* (1) All continuing education programs will be measured in terms of contact hours. The shortest recognized program will be one contact hour.

(2) A contact hour is 50 minutes of continuous participation in a program. Credit is granted only for a full contact hour, which is 50 minutes or multiples thereof. For example, a program lasting more than 50 minutes but less than 100 minutes will count as only one contact hour.

(3) Individual segments at continuous conferences, conventions and the like will be considered one total program. For example, two 90-minute segments (180 minutes) at a continuous conference will count as three contact hours.

(4) For university or college courses, each semester hour credit will equal 15 contact hours and a quarter hour credit will equal 10 contact hours.

(h) *Recordkeeping requirements.* (1) Each individual applying for renewal must retain for a period of four years following the date of renewal the information required with regard to qualifying continuing education credit hours. Such information includes—

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program, qualified program number, and description of its content;

(iv) Written outlines, course syllibi, textbook, and/or electronic materials provided or required for the course;

(v) The dates attended;

(vi) The credit hours claimed;

(vii) The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate; and

(viii) The certificate of completion and/or signed statement of the hours of attendance obtained from the continuing education provider.

(2) To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be maintained for a period of four years following the date of renewal—

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and copy of its content;

(iv) The dates of the program; and

(v) The credit hours claimed.

(i) *Waivers.* (1) Waiver from the continuing education requirements for a given period may be granted for the following reasons—

(i) Health, which prevented compliance with the continuing education requirements;

(ii) Extended active military duty;

(iii) Absence from the United States for an extended period of time due to employment or other reasons, provided the individual does not practice before the Internal Revenue Service during such absence; and

(iv) Other compelling reasons, which will be considered on a case-by-case basis.

(2) A request for waiver must be accompanied by appropriate documentation. The individual is required to furnish any additional documentation or explanation deemed necessary. Examples of appropriate documentation could be a medical certificate or military orders.

(3) A request for waiver must be filed no later than the last day of the renewal application period.

(4) If a request for waiver is not approved, the individual will be placed in inactive status. The individual will be notified that the waiver was not approved and that the individual has been placed on a roster of inactive enrolled agents, enrolled retirement plan agents, or registered tax return preparers.

(5) If the request for waiver is not approved, the individual may file a protest as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest filed under this section is not governed by subpart D of this part.

(6) If a request for waiver is approved, the individual will be notified and issued a card or certificate evidencing renewal.

(7) Those who are granted waivers are required to file timely applications for renewal of enrollment or registration.

(j) *Failure to comply.* (1) Compliance by an individual with the requirements of this part is determined by the Internal Revenue Service. The Internal Revenue Service will provide notice to any individual who fails to meet the continuing education and fee requirements of eligibility for renewal. The notice will state the basis for the determination of noncompliance and will provide the individual an opportunity to furnish the requested information in writing relating to the matter within 60 days of the date of the notice. Such information will be considered in making a final determination as to eligibility for renewal. The individual must be informed of the reason(s) for any denial of a renewal. The individual may, within 30 days after receipt of the notice of denial of renewal, file a written protest of the denial as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest under this section is not governed by subpart D of this part.

(2) The continuing education records of an enrolled agent, enrolled retirement plan agent, or registered tax return preparer may be reviewed to determine compliance with the requirements and standards for renewal as provided in paragraph (f) of this section. As part of this review, the enrolled agent, enrolled retirement plan agent or registered tax return preparer may be required to provide the Internal Revenue Service with copies of any continuing education records required to be maintained under this part. If the enrolled agent, enrolled retirement plan agent or registered tax return preparer fails to comply with this requirement, any continuing education hours claimed may be disallowed.

(3) An individual who has not filed a timely application for renewal, who has not made a timely response to the notice of noncompliance with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled individuals or inactive registered individuals. During this time, the individual will be ineligible to practice before the Internal Revenue Service.

(4) Individuals placed in inactive status and individuals ineligible to practice before the Internal Revenue Service may not state or imply that they are eligible to practice before the Internal Revenue Service, or use the terms enrolled agent, enrolled retirement plan agent, or registered tax return preparer, the designations "EA" or "ERPA" or other form of reference to eligibility to practice before the Internal Revenue Service.

(5) An individual placed in inactive status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of all required continuing education hours for the enrollment cycle or registration year. Continuing education credit under this paragraph (j)(5) may not be used to satisfy the requirements of the enrollment cycle or registration year in which the individual has been placed back on the active roster.

(6) An individual placed in inactive status must file an application for renewal and satisfy the requirements for renewal as set forth in this section within three years of being placed in inactive status. Otherwise, the name of such individual will be removed from the inactive status roster and the individual's status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer will terminate. Future eligibility for active status must then be reestablished by the individual as provided in this section.

(7) Inactive status is not available to an individual who is the subject of a pending disciplinary matter before the Internal Revenue Service.

(k) *Inactive retirement status.* An individual who no longer practices before the Internal Revenue Service may request to be placed in an inactive retirement status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. An individual who is placed in an inactive retirement status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of the required continuing education hours for the enrollment cycle or registration year. Inactive retirement status is not available to an individual who is ineligible to practice before the Internal Revenue Service or an individual who is the subject of a pending disciplinary matter under this part.

(l) *Renewal while under suspension or disbarment.* An individual who is ineligible to practice before the Internal Revenue Service by virtue of disciplinary action under this part is required to conform to the requirements for renewal of enrollment or registration before the individual's eligibility is restored.

(m) *Enrolled actuaries.* The enrollment and renewal of enrollment of actuaries authorized to practice under paragraph (d) of § 10.3 are governed by the regulations of the Joint Board for the Enrollment of Actuaries at 20 CFR 901.1 through 901.72.

(n) *Effective/applicability date.* This section is applicable to enrollment or registration effective beginning August 2, 2011.

■ **Par. 9.** Section 10.7 is amended by:
■ 1. Revising the section heading.
■ 2. Removing paragraph (c)(1)(viii).
■ 3. Revising paragraph (c)(2), and (d).
■ 4. Removing paragraph (e).
■ 5. Redesignating paragraphs (f) and (g) as paragraphs (e) and (f) and revising them.

The revisions read as follows:

§ 10.7 Representing oneself; participating in rulemaking; limited practice; and special appearances.

* * * * *

(c) * * *

(2) *Limitations.* (i) An individual who is under suspension or disbarment from practice before the Internal Revenue Service may not engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section.

(ii) The Commissioner, or delegate, may, after notice and opportunity for a conference, deny eligibility to engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section to any individual who has engaged in conduct that would justify a sanction under § 10.50.

(iii) An individual who represents a taxpayer under the authority ofparagraph (c)(1) of this section is subject, to the extent of his or her authority, to such rules of general applicability regarding standards of conduct and other matters as prescribed by the Internal Revenue Service.

(d) *Special appearances.* The Commissioner, or delegate, may, subject

to conditions deemed appropriate, authorize an individual who is not otherwise eligible to practice before the Internal Revenue Service to represent another person in a particular matter.

(e) *Fiduciaries.* For purposes of this part, a fiduciary (for example, a trustee, receiver, guardian, personal representative, administrator, or executor) is considered to be the taxpayer and not a representative of the taxpayer.

(f) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 10.** Section 10.8 is revised to read as follows:

§ 10.8 Return preparation and application of rules to other individuals.

(a) *Preparing all or substantially all of a tax return.* Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund must have a preparer tax identification number. Except as otherwise prescribed in forms, instructions, or other appropriate guidance, an individual must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer to obtain a preparer tax identification number. Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund is subject to the duties and restrictions relating to practice in subpart B, as well as subject to the sanctions for violation of the regulations in subpart C.

(b) *Preparing a tax return and furnishing information.* Any individual may for compensation prepare or assist with the preparation of a tax return or claim for refund (provided the individual prepares less than substantially all of the tax return or claim for refund), appear as a witness for the taxpayer before the Internal Revenue Service, or furnish information at the request of the Internal Revenue Service or any of its officers or employees.

(c) *Application of rules to other individuals.* Any individual who for compensation prepares, or assists in the preparation of, all or a substantial portion of a document pertaining to any taxpayer's tax liability for submission to the Internal Revenue Service is subject to the duties and restrictions relating to practice in subpart B, as well as subject to the sanctions for violation of the regulations in subpart C. Unless otherwise a practitioner, however, an individual may not for compensation prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund, or sign tax returns and claims for refund. For purposes of this paragraph, an individual described in 26 CFR 301.7701–15(f) is not treated as having prepared all or a substantial portion of the document by reason of such assistance.

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 11.** Section 10.9 is added to subpart A to read as follows:

§ 10.9 Continuing education providers and continuing education programs.

(a) *Continuing education providers*—(1) *In general.* Continuing education providers are those responsible for presenting continuing education programs. A continuing education provider must—

(i) Be an accredited educational institution;

(ii) Be recognized for continuing education purposes by the licensing body of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia;

(iii) Be recognized and approved by a qualifying organization as a provider of continuing education on subject matters within § 10.6(f) of this part. The Internal Revenue Service may, at its discretion, identify a professional organization, society or business entity that maintains minimum education standards comparable to those set forth in this part as a qualifying organization for purposes of this part in appropriate forms, instructions, and other appropriate guidance; or

(iv) Be recognized by the Internal Revenue Service as a professional organization, society, or business whose programs include offering continuing professional education opportunities in subject matters within § 10.6(f) of this part. The Internal Revenue Service, at its discretion, may require such professional organizations, societies, or businesses to file an agreement and/or obtain Internal Revenue Service approval of each program as a qualified continuing education program in appropriate forms, instructions or other appropriate guidance.

(2) *Continuing education provider numbers*—(i) *In general.* A continuing education provider is required to obtain a continuing education provider number and pay any applicable user fee.

(ii) *Renewal.* A continuing education provider maintains its status as a continuing education provider during the continuing education provider cycle by renewing its continuing education provider number as prescribed by forms, instructions or other appropriate guidance and paying any applicable user fee.

(3) *Requirements for qualified continuing education programs.* A continuing education provider must ensure the qualified continuing education program complies with all the following requirements—

(i) Programs must be developed by individual(s) qualified in the subject matter;

(ii) Program subject matter must be current;

(iii) Instructors, discussion leaders, and speakers must be qualified with respect to program content;

(iv) Programs must include some means for evaluation of the technical content and presentation to be evaluated;

(v) Certificates of completion bearing a current qualified continuing education program number issued by the Internal Revenue Service must be provided to the participants who successfully complete the program; and

(vi) Records must be maintained by the continuing education provider to verify the participants who attended and completed the program for a period of four years following completion of the program. In the case of continuous conferences, conventions, and the like, records must be maintained to verify completion of the program and attendance by each participant at each segment of the program.

(4) *Program numbers*—(i) *In general.* Every continuing education provider is required to obtain a continuing education provider program number and pay any applicable user fee for each program offered. Program numbers shall be obtained as prescribed by forms, instructions or other appropriate guidance. Although, at the discretion of the Internal Revenue Service, a continuing education provider may be required to demonstrate that the program is designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics) and complies with the requirements in paragraph (a)(2)of this section before a program number is issued.

(ii) *Update programs.* Update programs may use the same number as the program subject to update. An update program is a program that instructs on a change of existing law occurring within one year of the update program offering. The qualifying education program subject to update must have been offered within the two

year time period prior to the change in existing law.

(iii) *Change in existing law.* A change in existing law means the effective date of the statute or regulation, or date of entry of judicial decision, that is the subject of the update.

(b) *Failure to comply.* Compliance by a continuing education provider with the requirements of this part is determined by the Internal Revenue Service. A continuing education provider who fails to meet the requirements of this part will be notified by the Internal Revenue Service. The notice will state the basis for the determination of noncompliance and will provide the continuing education provider an opportunity to furnish the requested information in writing relating to the matter within 60 days of the date of the notice. The continuing education provider may, within 30 days after receipt of the notice of denial, file a written protest as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest under this section is not governed by subpart D of this part.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 12.** Section 10.20 is amended by

■ 1. Redesignating paragraphs (b) and (c) as (a)(3) and (b).

■ 2. Revising newly designated paragraphs (a)(3) and (b).

■ 3. Adding paragraph (c).

The revisions and additions read as follows:

§ 10.20 Information to be furnished.

(a) * * *

(3) When a proper and lawful request is made by a duly authorized officer or employee of the Internal Revenue Service, concerning an inquiry into an alleged violation of the regulations in this part, a practitioner must provide any information the practitioner has concerning the alleged violation and testify regarding this information in any proceeding instituted under this part, unless the practitioner believes in good faith and on reasonable grounds that the information is privileged.

(b) *Interference with a proper and lawful request for records or information.* A practitioner may not interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service, its officers or employees, to obtain any record or information unless the practitioner believes in good faith and on reasonable grounds that the record or information is privileged.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 13.** Section 10.25 is amended by revising paragraphs (c)(2) and (e) to read as follows:

§ 10.25 Practice by former government employees, their partners and their associates.

* * * * *

(c) * * *

(2) When isolation of a former Government employee is required under paragraph (c)(1) of this section, a statement affirming the fact of such isolation must be executed under oath by the former Government employee and by another member of the firm acting on behalf of the firm. The statement must clearly identify the firm, the former Government employee, and the particular matter(s) requiring isolation. The statement must be retained by the firm and, upon request, provided to the office(s) of the Internal Revenue Service administering or enforcing this part.

* * * * *

(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 14.** Section 10.30 is amended by revising paragraphs (a)(1) and (e) to read as follows:

§ 10.30 Solicitation.

(a) *Advertising and solicitation restrictions.* (1) A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. Enrolled agents, enrolled retirement plan agents, or registered tax return preparers, in describing their professional designation, may not utilize the term "certified" or imply an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions for enrolled agents are "enrolled to represent taxpayers before the Internal Revenue Service," "enrolled to practice before the Internal Revenue Service," and "admitted to practice before the Internal Revenue Service." Similarly, examples of acceptable descriptions for enrolled retirement plan agents are "enrolled to represent taxpayers before the Internal Revenue Service as a retirement plan agent" and "enrolled to practice before the Internal Revenue Service as a retirement plan agent." An example of an acceptable description for registered tax return preparers is "designated as a registered tax return preparer by the Internal Revenue Service."

* * * * *

(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

* * * * *

■ **Par. 15.** Section 10.34 is amended by:

■ 1. Adding paragraph (a).

■ 2. Redesignating paragraph (f) as paragraph (e).

■ 3. Revising newly designated paragraph (e).

The revision and addition read as follows:

§ 10.34 Standards with respect to tax returns and documents, affidavits and other papers.

(a) *Tax returns.* (1) A practitioner may not willfully, recklessly, or through gross incompetence—

(i) Sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that—

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in section 6694(a)(2) of the Internal Revenue code (Code) (including the related regulations and other published guidance); or

(C) Is a willful attempted by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(ii) Advise a client to take a position on a tax return or claim for refund, or prepare a portion off a tax return or claim for refund containing a position, that—

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in section 6694(a)(2) of theCode (including the related regulations and other published guidance); or

(C) Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(2) A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted willfully, recklessly, or through gross incompetence.

* * * * *

(e) *Effective/applicability date.* Paragraph (a) of this section is

applicable for returns or claims for refund filed, or advice provided, beginning August 2, 2011. Paragraphs (b) through (d) of this section are applicable to tax returns, documents, affidavits, and other papers filed on or after September 26, 2007.

■ **Par. 16.** Section 10.36 is amended by:
■ 1. Redesignating paragraph (b) as paragraph (c).
■ 2. Adding new paragraph (b).
■ 3. Revising newly designated paragraph (c).

The addition and revisions read as follows:

§ 10.36 Procedures to ensure compliance.

* * * * *

(b) *Requirements for tax returns and other documents.* Any practitioner who has (or practitioners who have or share) principal authority and responsibility for overseeing a firm's practice of preparing tax returns, claims for refunds, or other documents for submission to the Internal Revenue Service must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with Circular 230. Any practitioner who has (or practitioners who have or share) this principal authority will be subject to discipline for failing to comply with the requirements of this paragraph if—

(1) The practitioner through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with Circular 230, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with Circular 230; or

(2) The practitioner knows or should know that one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, that does not comply with Circular 230, and the practitioner, through willfulness, recklessness, or gross incompetence fails to take prompt action to correct the noncompliance.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 17.** Section 10.38 is revised to read as follows:

§ 10.38 Establishment of advisory committees.

(a) *Advisory committees.* To promote and maintain the public's confidence in tax advisors, the Internal Revenue Service is authorized to establish one or more advisory committees composed of at least six individuals authorized to practice before the Internal Revenue Service. Membership of an advisory committee must be balanced among those who practice as attorneys, accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and registered tax return preparers. Under procedures prescribed by the Internal Revenue Service, an advisory committee may review and make general recommendations regarding the practices, procedures, and policies of the offices described in § 10.1.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 18.** Section 10.50 is amended by
■ 1. Revising paragraph (b)(1).
■ 2. Removing paragraphs (d) and (e) as paragraphs (e) and (f).
■ 3. Adding new paragraph (d).
■ 4. Revising newly redesignated paragraph (f).

The revisions and addition read as follows:

§ 10.50 Sanctions.

* * * * *

(b) * * *

(1) If any appraiser is disqualified pursuant to this subpart C, the appraiser is barred from presenting evidence or testimony in any administrative proceeding before the Department of Treasury or the Internal Revenue Service, unless and until authorized to do so by the Internal Revenue Service pursuant to § 10.81, regardless of whether the evidence or testimony would pertain to an appraisal made prior to or after the effective date of disqualification.

* * * * *

(d) *Authority to accept a practitioner's consent to sanction.* The Internal Revenue Service may accept a practitioner's offer of consent to be sanctioned under § 10.50 in lieu of instituting or continuing a proceeding under § 10.60(a).

* * * * *

(f) *Effective/applicability date.* This section is applicable to conduct occurring on or after August 2, 2011, except that paragraphs (a), (b)(2), and (e) apply to conduct occurring on or after September 26, 2007, and paragraph (c) applies to prohibited conduct that occurs after October 22, 2004.

■ **Par. 19.** Section 10.51 is amended by adding paragraphs (a)(16), (17), and (18) and revising paragraph (b) to read as follows:

§ 10.51 Incompetence and disreputable conduct.

(a) * * *

(16) Willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so by the Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.

(17) Willfully preparing all or substantially all of, or signing, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid preparer tax identification number or other prescribed identifying number.

(18) Willfully representing a taxpayer before an officer or employee of the Internal Revenue Service unless the practitioner is authorized to do so pursuant to this part.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 20.** Section 10.53 is revised to read as follows:

§ 10.53 Receipt of information concerning practitioner.

(a) *Officer or employee of the Internal Revenue Service.* If an officer or employee of the Internal Revenue Service has reason to believe a practitioner has violated any provision of this part, the officer or employee will promptly make a written report of the suspected violation. The report will explain the facts and reasons upon which the officer's or employee's belief rests and must be submitted to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part.

(b) *Other persons.* Any person other than an officer or employee of the Internal Revenue Service having information of a violation of any provision of this part may make an oral or written report of the alleged violation to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part or any officer or employee of the Internal Revenue Service. If the report is made to an officer or employee of the Internal Revenue Service, the officer or employee will make a written report of the suspected violation and submit the report to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part.

(c) *Destruction of report.* No report made under paragraph (a) or (b) of this section shall be maintained unless retention of the report is permissible under the applicable records control schedule as approved by the National Archives and Records Administration

and designated in the Internal Revenue Manual. Reports must be destroyed as soon as permissible under the applicable records control schedule.

(d) *Effect on proceedings under subpart D.* The destruction of any report will not bar any proceeding under subpart D of this part, but will preclude the use of a copy of the report in a proceeding under subpart D of this part.

(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 21.** Section 10.60 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 10.60 Institution of proceeding.

(a) Whenever it is determined that a practitioner (or employer, firm or other entity, if applicable) violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the practitioner may be reprimanded in accordance with § 10.62, or subject to a proceeding for sanctions described in § 10.50.

(b) Whenever a penalty has been assessed against an appraiser under the Internal Revenue Code and an appropriate officer or employee in an office established to enforce this part determines that the appraiser acted willfully, recklessly, or through gross incompetence with respect to the proscribed conduct, the appraiser may be reprimanded in accordance with § 10.62 or subject to a proceeding for disqualification. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 22.** Section 10.61 is amended by revising paragraphs (a), (b)(2), and (c) to read as follows:

§ 10.61 Conferences.

(a) *In general.* The Commissioner, or delegate, may confer with a practitioner, employer, firm or other entity, or an appraiser concerning allegations of misconduct irrespective of whether a proceeding has been instituted. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner, employer, firm or other entity, or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) * * *

(2) *Discretion; acceptance or declination.* The Commissioner, or delegate, may accept or decline the offer described in paragraph (b)(1) of this section. When the decision is to decline the offer, the written notice of declination may state that the offer described in paragraph (b)(1) of this section would be accepted if it contained different terms. The Commissioner, or delegate, has the discretion to accept or reject a revised offer submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 23.** Section 10.62 is revised to read as follows:

§ 10.62 Contents of complaint.

(a) *Charges.* A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by an authorized representative of the Internal Revenue Service under § 10.69(a)(1). A complaint is sufficient if it fairly informs the respondent of the charges brought so that the respondent is able to prepare a defense.

(b) *Specification of sanction.* The complaint must specify the sanction sought against the practitioner or appraiser. If the sanction sought is a suspension, the duration of the suspension sought must be specified.

(c) *Demand for answer.* The respondent must be notified in the complaint or in a separate paper attached to the complaint of the time for answering the complaint, which may not be less than 30 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the Internal Revenue Service to whom a copy of the answer must be served, and that a decision by default may be rendered against the respondent in the event an answer is not filed as required.

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 24.** Section 10.63 is amended by revising paragraphs (c) and (f) to read as follows:

§ 10.63 Service of complaint; service of other papers; service of evidence in support of complaint; filing of papers.

* * * * *

(c) *Service of papers on the Internal Revenue Service.* Whenever a paper is required or permitted to be served on the Internal Revenue Service in connection with a proceeding under this part, the paper will be served on the Internal Revenue Service's authorized representative under § 10.69(a)(1) at the address designated in the complaint, or at an address provided in a notice of appearance. If no address is designated in the complaint or provided in a notice of appearance, service will be made on the office(s) established to enforce this part under the authority of § 10.1, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

* * * * *

(f) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 25.** Section 10.64 is amended by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 10.64 Answer; default.

(a) *Filing.* The respondent's answer must be filed with the Administrative Law Judge, and served on the Internal Revenue Service, within the time specified in the complaint unless, on request or application of the respondent, the time is extended by the Administrative Law Judge.

* * * * *

(f) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 26.** Section 10.65 is amended by revising paragraphs (a) and (c) to read:

§ 10.65 Supplemental charges.

(a) *In general.* Supplemental charges may be filed against the respondent by amending the complaint with the permission of the Administrative Law Judge if, for example—

(1) It appears that the respondent, in the answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has insufficient knowledge to form a belief, when the respondent possesses such information; or

(2) It appears that the respondent has knowingly introduced false testimony during the proceedings against the respondent.

* * * * *

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 27.** Section 10.66 is revised to read as follows:

§ 10.66 Reply to answer.

(a) The Internal Revenue Service may file a reply to the respondent's answer, but unless otherwise ordered by the Administrative Law Judge, no reply to the respondent's answer is required. If a reply is not filed, new matter in the answer is deemed denied.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 28.** Section 10.69 is revised to read as follows:

§ 10.69 Representation; ex parte communication.

(a) *Representation.* The Internal Revenue Service may be represented in proceedings under this part by an attorney or other employee of the Internal Revenue Service. An attorney or an employee of the Internal Revenue Service representing the Internal Revenue Service in a proceeding under this part may sign the complaint or any document required to be filed in the proceeding on behalf of the Internal Revenue Service.

(b) *Ex parte communication.* The Internal Revenue Service, the respondent, and any representatives of either party, may not attempt to initiate or participate in ex parte discussions concerning a proceeding or potential proceeding with the Administrative Law Judge (or any person who is likely to advise the Administrative Law Judge on a ruling or decision) in the proceeding before or during the pendency of the proceeding. Any memorandum, letter or other communication concerning the merits of the proceeding, addressed to the Administrative Law Judge, by or on behalf of any party shall be regarded as an argument in the proceeding and shall be served on the other party.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 29.** Section 10.72 is amended by revising paragraphs (a)(3)(iv)(A), (d)(1), and (g) to read as follows:

§ 10.72 Hearings.

(a) * * *

(3) * * *

(iv) * * *

(A) The Internal Revenue Service withdraws the complaint;

* * * * *

(d) *Publicity*—(1) *In general.* All reports and decisions of the Secretary of the Treasury, or delegate, including any reports and decisions of the Administrative Law Judge, under this subpart D are, subject to the protective measures in paragraph (d)(4) of this section, public and open to inspection within 30 days after the agency's decision becomes final.

* * * * *

(g) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 30.** Section 10.76 is amended by revising paragraphs (c), and (e) to read as follows:

§ 10.76 Decision of Administrative Law Judge.

* * * * *

(c) *Copy of decision.* The Administrative Law Judge will provide the decision to the Internal Revenue Service's authorized representative, and a copy of the decision to the respondent or the respondent's authorized representative.

* * * * *

(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 31.** Section 10.77 is revised to read as follows:

§ 10.77 Appeal of decision of Administrative Law Judge.

(a) *Appeal.* Any party to the proceeding under this subpart D may appeal the decision of the Administrative Law Judge by filing a notice of appeal with the Secretary of the Treasury, or delegate deciding appeals. The notice of appeal must include a brief that states exceptions to the decision of Administrative Law Judge and supporting reasons for such exceptions.

(b) *Time and place for filing of appeal.* The notice of appeal and brief must be filed, in duplicate, with the Secretary of the Treasury, or delegate deciding appeals, at an address for appeals that is identified to the parties with the decision of the Administrative Law Judge. The notice of appeal and brief must be filed within 30 days of the date that the decision of the Administrative Law Judge is served on the parties. The appealing party must serve a copy of the notice of appeal and the brief to any non-appealing party or, if the party is represented, the non-appealing party's representative.

(c) *Response.* Within 30 days of receiving the copy of the appellant's brief, the other party may file a response brief with the Secretary of the Treasury, or delegate deciding appeals, using the address identified for appeals. A copy of the response brief must be served at the same time on the opposing party or, if the party is represented, the opposing party's representative.

(d) *No other briefs, responses or motions as of right.* Other than the appeal brief and response brief, the parties are not permitted to file any other briefs, responses or motions, except on a grant of leave to do so after a motion demonstrating sufficient cause, or unless otherwise ordered by the Secretary of the Treasury, or delegate deciding appeals.

(e) *Additional time for briefs and responses.* Notwithstanding the time for filing briefs and responses provided in paragraphs (b) and (c) of this section, the Secretary of the Treasury, or delegate deciding appeals, may, for good cause, authorize additional time for filing briefs and responses upon a motion of a party or upon the initiative of the Secretary of the Treasury, or delegate deciding appeals.

(f) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 32.** Section 10.78 is amended by revising paragraphs (c) and (d) to read as follows:

§ 10.78 Decision on review.

* * * * *

(c) *Copy of decision on review.* The Secretary of the Treasury, or delegate, will provide copies of the agency decision to the authorized representative of the Internal Revenue Service and the respondent or the respondent's authorized representative.

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 33.** Section 10.79 is revised to read as follows:

§ 10.79 Effect of disbarment, suspension, or censure.

(a) *Disbarment.* When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Internal Revenue Service) and such decision is for disbarment, the respondent will not be permitted to practice before the Internal Revenue Service unless and until authorized to do so by the Internal Revenue Service pursuant to § 10.81.

(b) *Suspension.* When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Internal Revenue Service) and such decision is for suspension, the respondent will not be permitted to practice before the Internal Revenue Service during the period of suspension. For periods after the suspension, the practitioner's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(c) *Censure.* When the final decision in the case is against the respondent (or the Internal Revenue Service has accepted the respondent's offer to consent, if such offer was made) and such decision is for censure, the respondent will be permitted to practice before the Internal Revenue Service, but the respondent's future representations may be subject to conditions as

authorized by paragraph (d) of this section.

(d) *Conditions.* After being subject to the sanction of either suspension or censure, the future representations of a practitioner so sanctioned shall be subject to specified conditions designed to promote high standards of conduct. These conditions can be imposed for a reasonable period in light of the gravity of the practitioner's violations. For example, where a practitioner is censured because the practitioner failed to advise the practitioner's clients about a potential conflict of interest or failed to obtain the clients' written consents, the practitioner may be required to provide the Internal Revenue Service with a copy of all consents obtained by the practitioner for an appropriate period following censure, whether or not such consents are specifically requested.

(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 34.** Section 10.80 is revised to read as follows:

§ 10.80 Notice of disbarment, suspension, censure, or disqualification.

(a) *In general.* On the issuance of a final order censuring, suspending, or disbarring a practitioner or a final order disqualifying an appraiser, notification of the censure, suspension, disbarment or disqualification will be given to appropriate officers and employees of the Internal Revenue Service and interested departments and agencies of the Federal government. The Internal Revenue Service may determine the manner of giving notice to the proper authorities of the State by which the censured, suspended, or disbarred person was licensed to practice.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 35.** Section 10.81 is revised to read as follows:

§ 10.81 Petition for reinstatement.

(a) *In general.* A disbarred practitioner or a disqualified appraiser may petition for reinstatement before the Internal Revenue Service after the expiration of 5 years following such disbarment or disqualification. Reinstatement will not be granted unless the Internal Revenue Service is satisfied that the petitioner is not likely to conduct himself, thereafter, contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 36.** Section 10.82 is amended by revising paragraphs (a), (c) introductory text, (c)(3), (d), (e), (f), (g), and (h) to read as follows:

§ 10.82 Expedited suspension.

(a) *When applicable.* Whenever the Commissioner, or delegate, determines that a practitioner is described in paragraph (b) of this section, proceedings may be instituted under this section to suspend the practitioner from practice before the Internal Revenue Service.

* * * * *

(c) *Instituting a proceeding.* A proceeding under this section will be instituted by a complaint that names the respondent, is signed by an authorized representative of the Internal Revenue Service under § 10.69(a)(1), and is filed and served according to the rules set forth in paragraph (a) of § 10.63. The complaint must give a plain and concise description of the allegations that constitute the basis for the proceeding. The complaint must notify the respondent—

* * * * *

(3) That the respondent may request a conference to address the merits of the complaint and that any such request must be made in the answer; and

* * * * *

(d) *Answer.* The answer to a complaint described in this section must be filed no later than 30 calendar days following the date the complaint is served, unless the time for filing is extended. The answer must be filed in accordance with the rules set forth in § 10.64, except as otherwise provided in this section. A respondent is entitled to a conference only if the conference is requested in a timely filed answer. If a request for a conference is not made in the answer or the answer is not timely filed, the respondent will be deemed to have waived the right to a conference and may be suspended at any time following the date on which the answer was due.

(e) *Conference.* An authorized representative of the Internal Revenue Service will preside at a conference described in this section. The conference will be held at a place and time selected by the Internal Revenue Service, but no sooner than 14 calendar days after the date by which the answer must be filed with the Internal Revenue Service, unless the respondent agrees to an earlier date. An authorized representative may represent the respondent at the conference. Following the conference, upon a finding that the respondent is described in paragraph (b) of this section, or upon the respondent's failure to appear at the conference either personally or through an authorized representative, the respondent may be immediately suspended from practice before the Internal Revenue Service.

(f) *Duration of suspension.* A suspension under this section will commence on the date that written notice of the suspension is issued. The suspension will remain effective until the earlier of the following:

(1) The Internal Revenue Service lifts the suspension after determining that the practitioner is no longer described in paragraph (b) of this section or for any other reason; or

(2) The suspension is lifted by an Administrative Law Judge or the Secretary of the Treasury in a proceeding referred to in paragraph (g) of this section and instituted under § 10.60.

(g) *Proceeding instituted under § 10.60.* If the Internal Revenue Service suspended a practitioner under this section, the practitioner may ask the Internal Revenue Service to issue a complaint under § 10.60. The request must be made in writing within 2 years from the date on which the practitioner's suspension commences. The Internal Revenue Service must issue a complaint requested under this paragraph within 30 calendar days of receiving the request.

(h) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

■ **Par. 37.** Section 10.90 is amended by:

■ 1. Revising paragraph (a).

■ 2. Redesignating the second paragraph (b) as paragraph (c).

■ 3. Revising newly designated paragraph (c).

The revisions read as follows:

§ 10.90 Records.

(a) *Roster.* The Internal Revenue Service will maintain and make available for public inspection in the time and manner prescribed by the Secretary, or delegate, the following rosters—

(1) Individuals (and employers, firms, or other entities, if applicable) censured, suspended, or disbarred from practice before the Internal Revenue Service or upon whom a monetary penalty was imposed.

(2) Enrolled agents, including individuals—

(i) Granted active enrollment to practice;

(ii) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(iii) Whose enrollment has been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from enrollment has been accepted by

the Internal Revenue Service under § 10.61.

(3) Enrolled retirement plan agents, including individuals—

(i) Granted active enrollment to practice;

(ii) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(iii) Whose enrollment has been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from enrollment has been accepted under § 10.61.

(4) Registered tax return preparers, including individuals—

(i) Authorized to prepare all or substantially all of a tax return or claim for refund;

(ii) Who have been placed in inactive status for failure to meet the requirements for renewal;

(iii) Who have been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from their status as a registered tax return preparer has been accepted by the Internal Revenue Service under § 10.61.

(5) Disqualified appraisers.

(6) Qualified continuing education providers, including providers—

(i) Who have obtain a qualifying continuing education provider number

(ii) Whose qualifying continuing education number has been revoked for failure to comply with the requirements of this part.

* * * * *

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: May 20, 2011.

George Madison,

General Counsel, Office of the Secretary.

[FR Doc. 2011–13666 Filed 5–31–11; 11:15 am]

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Federal Register

Vol. 76, No. 107

Friday, June 3, 2011

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Other Services	
Electronic and on-line services (voice)	**741–6020**
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FEDERAL REGISTER PAGES AND DATE, JUNE

CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
Ch. XVIII 31884
Ch. XXIV 31884

3 CFR

Proclamations:
8683 32065

5 CFR

532 31785

Proposed Rules:
Ch. I 31886
532 31885
Ch. VII 32088
Ch. LIX 31884
Ch. LXV 31884
Ch. XXXV 31886

7 CFR

51 31787
201 31790
457 32067

Proposed Rules:
36 31887
205 31495
916 31888
917 31888
1205 32088

9 CFR

Proposed Rules:
92 31499
93 31499
94 31499
96 31499
98 31499

10 CFR

430 31750
431 31795

Proposed Rules:
40 31507
150 31507

12 CFR

202 31451

Proposed Rules:
Ch. XVII 31884

14 CFR

25 ..... 31451, 31453, 31454, 31456
39 ..... 31457, 31459, 31462, 31465, 31796, 31798, 31800, 31803
71 ..... 31821, 31822
91 31823

Proposed Rules:
39 ..... 31508, 32103
71 31510
139 32105
217 31511
241 31511
298 31511
382 32107
Ch. V 31884

16 CFR

259 31467

Proposed Rules:
309 31513

17 CFR

Proposed Rules:
22 31518
190 31518
230 31518
239 31518

19 CFR

122 31823

20 CFR

Proposed Rules:
Ch. III 31892

21 CFR

5 31468
10 31468
14 31468
19 31468
20 31468
21 31468
314 31468
350 31468
516 31468
814 31468
1310 31824

24 CFR

Proposed Rules:
Ch. I 31884
Ch. II 31884
Ch. III 31884
Ch. IV 31884
Ch. V 31884
Ch. VI 31884
Ch. VIII 31884
Ch. IX 31884
Ch. X 31884
Ch. XII 31884

26 CFR

Proposed Rules:
1 31543
301 31543

29 CFR

Proposed Rules:
1602 31892
2550 31544

31 CFR

10 32286

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

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S. 990/P.L. 112–14

PATRIOT Sunsets Extension Act of 2011 (May 26, 2011; 125 Stat. 216)

Last List May 16, 2011

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