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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Doc. No. AMS–FV–11–0012; FV11–946–2 FIR]

Irish Potatoes Grown in Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the State of Washington Potato Committee (Committee) for the 2011–2012 and subsequent fiscal periods from $0.0035 to $0.003 per hundredweight of potatoes handled. The Committee locally administers the marketing order for Irish potatoes grown in Washington. The interim rule was necessary to allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

DATES: Effective July 15, 2011.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Under the order, Washington potato handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable Washington potatoes for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on July 1, and ends on June 30.

In an interim rule published in the **Federal Register** on April 1, 2011, and effective on April 2, 2011, (76 FR 18001, Doc. No. AMS–FV–11–0012, FV11–946–2 IR), § 946.248 was amended by decreasing the assessment rate established for Washington potatoes for the 2011–2012 and subsequent fiscal periods from $0.0035 to $0.003 per hundredweight. The decrease in the per hundredweight assessment rate allows the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 43 handlers of Washington potatoes subject to regulation under the order and approximately 267 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2009–2010 marketing year, the Committee reports that 9,765,131 hundredweight of Washington potatoes were shipped into the fresh market. Based on average f.o.b. prices estimated by the USDA's Economic Research Service and Committee data on individual handler shipments, the Committee estimates that 42, or approximately 98 percent of the handlers, had annual receipts of less than $7,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for 2010 was $7.55 per hundredweight. The average gross annual revenue for the 267 Washington potato producers is therefore calculated to be approximately $276,130. In view of the foregoing, the majority of Washington potato producers and handlers may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2011–2012 and subsequent fiscal periods from $0.0035 to $0.003 per hundredweight of potatoes. The Committee unanimously recommended 2011–2012 expenditures of $40,050 and an assessment rate of $0.003 per hundredweight of potatoes. The assessment rate of $0.003 is $0.0005 lower than the rate previously in effect. Applying the $0.003 per hundredweight assessment rate to the Committee's 10,000,000 hundredweight crop estimate should provide $30,000 in assessment income. Thus, income derived from handler assessments, along with interest income and funds from the Committee's monetary reserve will be adequate to cover the budgeted expenses. This action will allow the Committee to reduce its financial

reserve while still providing adequate funding to meet program expenses.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 26, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Comments on the interim rule were required to be received on or before May 31, 2011. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS–FV–11–0012–0001.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (76 FR 18001, April 1, 2011) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 946—IRISH POTATOES GROWN IN WASHINGTON [AMENDED]

■ Accordingly, the interim rule amending 7 CFR part 946, which was published at 76 FR 18001 on April 1, 2011, is adopted as a final rule, without change.

Dated: July 12, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–17881 Filed 7–14–11; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1408]

RIN 7100–AD67

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: Section 701 of the Equal Credit Opportunity Act (ECOA) requires a creditor to notify a credit applicant when it has taken adverse action against the applicant. The ECOA adverse action requirements are implemented in the Board's Regulation B. Section 615(a) of the Fair Credit Reporting Act (FCRA) also requires a person to provide a notice when the person takes an adverse action against a consumer based in whole or in part on information in a consumer report. Certain model notices in Regulation B include the content required by both the ECOA and the FCRA adverse action provisions, so that creditors can use the model notices to comply with the adverse action requirements of both statutes. The Board is amending these model notices in Regulation B to include the disclosure of credit scores and related information if a credit score is used in taking adverse action. The revised model notices reflect the new content requirements in section 615(a) of the FCRA as amended by section 1100F of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

DATES: These rules are effective August 15, 2011.

FOR FURTHER INFORMATION CONTACT: Krista P. Ayoub, Counsel; Mandie K. Aubrey or Nikita M. Pastor, Senior Attorneys; or Catherine Henderson, Attorney, Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of a Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 et seq., makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, or age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Board's Regulation B (12 CFR part 202) implements the ECOA.

Section 701(d) of the ECOA generally requires a creditor to notify a credit applicant against whom it has taken an adverse action. Under section 701(d)(6) of the ECOA, an adverse action generally means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested.

Section 615(a) of the FCRA, 15 U.S.C. 1681m(a), also requires a person to provide an adverse action notice when the person takes an adverse action based in whole or in part on information in a consumer report. The definition of adverse action in section 603(k) of the FCRA incorporates, for purposes of credit transactions, the definition of adverse action under the ECOA. The adverse action provisions in both the ECOA and the FCRA require certain disclosures to be given to consumers.

The ECOA adverse action provisions are implemented in Regulation B. There are no implementing regulations for the adverse action requirements of section 615(a) of the FCRA. However, as explained in staff commentary that accompanies Regulation B, certain model notices in Regulation B include the content required by both the ECOA and the FCRA, so that persons can use the model notices to comply with the adverse action requirements of both statutes.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was signed into law. Public Law 111–203, 124 Stat. 1376. Section 1100F of the Dodd-Frank Act amends section 615(a)

of the FCRA to require creditors to disclose on FCRA adverse action notices a credit score used in taking any adverse action and information relating to that score. The effective date of these amendments is July 21, 2011.[1]

On March 15, 2011, the Board proposed to amend the model adverse action notices in Regulation B that incorporate the content requirements of FCRA section 615(a) to reflect the new content requirements added by section 1100F of the Dodd-Frank Act. 76 FR 13896. The comment period closed on April 14, 2011.[2] The Board received more than 30 comment letters regarding the proposal from banks and other creditors, industry trade associations, consumer groups, individual consumers, and others. After considering the comments received, pursuant to its authority in section 703(a) of the ECOA, the Board is issuing revised model adverse action notices substantially as proposed. As revised, the adverse action model notices in Regulation B are consistent with the requirements of section 1100F of the Dodd-Frank Act to help facilitate compliance with that provision when it becomes effective.

II. Section-by-Section Analysis

Section 202.12(b)(4)

In 2007, the Board redesignated § 202.17 of Regulation B as § 202.16. See 72 FR 63451, November 9, 2007. However, a reference to § 202.17 in § 202.12(b)(4) was not revised to reflect the change. The Board is correcting the citation in § 202.12(b)(4) so that it refers to § 202.16.

Appendix C to Part 202—Sample Notification Forms

Under section 701(d) of the ECOA, a creditor must provide to applicants against whom adverse action is taken either: (1) A statement of reasons for taking the adverse action as a matter of course; or (2) a notification of adverse action which discloses the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made by the applicant within sixty days after the written notification. Section 615(a) of the FCRA requires a person to provide, in an adverse action notice, information regarding the consumer reporting agency that furnished the consumer report used in taking the adverse action. It also requires a person to disclose that a consumer has a right to a free consumer report and a right to dispute the accuracy or completeness of any information in a consumer report.

Section 1100F of the Dodd-Frank Act amends section 615(a) of the FCRA to require that creditors disclose additional information on FCRA adverse action notices. The statute generally requires that a FCRA adverse action notice include: (1) A numerical credit score used in making the credit decision; (2) the range of possible scores under the model used; (3) up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor); (4) the date on which the credit score was created; and (5) the name of the person or entity that provided the credit score.

Model Notices C–1 Through C–5

General Content

As explained in paragraph 2 of Appendix C to Part 202, model notices C–1 through C–5 may be used to comply with the adverse action provisions of both the ECOA and the FCRA. The Board is amending model notices C–1 through C–5 substantially as proposed to incorporate the additional content requirements prescribed by section 1100F of the Dodd-Frank Act.

The Board proposed to revise Forms C–1 through C–5 to include, as applicable, a statement that the creditor obtained the consumer's credit score from a consumer reporting agency named in the notice, and used the score in making the credit decision. The proposed model notices also contained language stating that a credit score is a number that reflects the information in the consumer's consumer report, and that the consumer's credit score can change, depending on how the information in the consumer report changes. The proposed model notices provided space for the creditor to include the content required under section 1100F of the Dodd-Frank Act that is specific to the consumer. This content includes: the consumer's credit score, the date the credit score was created, the range of possible credit scores under the model used, and up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor). The Board also proposed additional changes to Form C–3 for clarity, which are discussed in more detail below.

In the proposal, the Board noted that section 1100F of the Dodd-Frank Act requires a creditor to provide, if applicable, a consumer's credit score and related information to a consumer, regardless of whether the creditor provides a statement of specific reasons for taking the adverse action or a disclosure of the applicant's right to a statement of specific reasons for an adverse action. Therefore, a creditor would not comply with the adverse action provisions in section 1100F by providing the required FCRA disclosures only if a consumer responds with a request for a statement of specific reasons for an adverse action. As a result, proposed Form C–5 reflected the requirement to provide the disclosures required by section 615(a) of the FCRA, including the consumer's credit score and key factors that adversely affected the consumer's credit score, at the time a creditor provides a disclosure of the applicant's right to a statement of specific reasons for the adverse action.

The Board also proposed to amend comment 9(b)(2)–9 to clarify that the FCRA requires a creditor to disclose, as applicable, a credit score it used in taking adverse action along with related information, including up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor). Proposed comment 9(b)(2)–9 also would have clarified that disclosing the key factors that adversely affected the consumer's credit score under the FCRA does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit.

In addition, the Board proposed to amend paragraph 2 of Appendix C to discuss the new disclosure requirements set forth in section 1100F of the Dodd-Frank Act. Paragraph 2 of Appendix C discusses the disclosure requirements of section 615 of the FCRA that are contained in Forms C–1 through C–5. Paragraph 2 explains that Form C–1 contains the disclosures required by FCRA sections 615(a) and (b), and Forms C–2 through C–5 contain only the disclosures required by FCRA section 615(a).

Paragraph 2 as revised would also state that the combined ECOA–FCRA disclosures in Form C–1 through Form C–5 must state that a creditor obtained information from a consumer reporting agency that was considered in the credit decision. Consistent with section 1100F of the Dodd-Frank Act, the Board

[1] Section 1100H of the Dodd-Frank Act provides that the amendments in Subtitle H of Title X, which includes Section 1100F, become effective on the ''designated transfer date.'' The Secretary of the Treasury set the designated transfer date as July 21, 2011. 75 FR 57252 (Sept. 20, 2010).

[2] Commenters also had until May 16, 2011 to provide comments on the Board's analysis of the proposal under the Paperwork Reduction Act.

proposed to revise the paragraph to state that the combined disclosure must also include, as applicable, a credit score used in taking adverse action along with related information.

The Board received several comments on the proposed changes to the model forms, as discussed below. The Board did not receive comments on the proposed changes to comment 9(b)(2)–9 or paragraph 2 of Appendix C. For the reasons discussed below, the final rule largely adopts the proposed changes to Appendix C and model forms C–1 through C–5. For clarity, a revision has been made pertaining to the optional disclosure of contact information for the entity that provided the credit score. Comment 9(b)(2)–9 is also adopted as proposed.

Contact information for the entity that provided the credit score. Several industry commenters asked that the Board add language to the model forms directing the consumer to the consumer reporting agency for more information about the credit score. The commenters believed that consumers may otherwise contact creditors with questions about their credit score, even if creditors are not in a position to answer those questions.

The Board is adding optional language to the model forms that creditors may use to direct the consumer to the entity (which may be a consumer reporting agency or the creditor itself, for a proprietary score that meets the definition of a credit score) that provided the credit score for any questions about the credit score, along with the entity's contact information. Because this language is optional, creditors may use or not use the additional language without losing the safe harbor provided under Regulation B and the ECOA. Paragraph 2 of Appendix C is revised to clarify that the disclosure of the entity's contact information is optional.

Disclosure of source of credit score information. Some industry commenters expressed concern about the reference to ''this consumer reporting agency'' in the model form. One commenter requested that the Board provide flexibility to creditors to replace the general reference to ''this consumer reporting agency'' with a more specific reference to the name of the particular consumer reporting agency from which the creditor obtained the score being disclosed. This commenter noted that creditors need flexibility when a creditor bases its decision on reports from multiple consumer reporting agencies and only one score is disclosed on the adverse action notice.

A creditor receives a safe harbor for compliance with Regulation B for proper use of the model forms. See paragraph 5 of Appendix C. Paragraph 3 of Appendix C notes that the model forms are illustrative, however, and may not be appropriate for all creditors. The instructions provide examples of instances where a creditor would need to modify the model forms to ensure that they are accurate for the creditor's purposes. Regulation B provides creditors flexibility to change the model forms as applicable and still receive the safe harbor provided in Regulation B, although creditors must make proper use of the model forms.

When a creditor has based its adverse action decision on reports from multiple consumer reporting agencies, the Board thus expects that the creditor would replace the general reference to ''this consumer reporting agency'' with a more specific reference to the name of the consumer reporting agency from which the creditor obtained the score being disclosed, to avoid ambiguity and consumer confusion. Moreover, section 1100F of the Dodd-Frank Act requires disclosure of the source of the credit score. The Board does not believe that a general reference to ''this consumer reporting agency'' would satisfy the requirements of the statute when a creditor has based its adverse action decision on reports from multiple consumer reporting agencies.

Disclosure that credit score has been used. Model forms C–1 through C–5 contain the following language: ''We also obtained your credit score from this consumer reporting agency and used it in making our credit decision.'' Some industry commenters requested that the Board revise this language to allow a creditor in all cases to disclose that the creditor ''may have used'' the credit score in making the credit decision because the commenters believe there are circumstances where it may be ambiguous whether a creditor used a credit score. For example, one commenter stated that if a creditor judgmentally evaluates a joint application, it might not be clear whether the underwriter used one of the co-applicants' credit score. To ensure compliance with section 1100F of the Dodd-Frank Act, these commenters noted that many creditors may prefer to disclose the applicant's credit score (along with related information) whenever they receive a score as part of the application process. To facilitate this, the commenters suggested that the Board change the new model language in Appendix C to indicate that the creditor ''may have used'' the credit score in making the credit decision. These commenters asserted that this revised language would allow creditors to provide credit score disclosures even if there is some ambiguity regarding whether a credit score was used in the credit decision without raising the question of whether the model language is accurate.

The model forms do not include the suggested change. The commenters' suggestion would result in all consumers receiving a disclosure stating that their credit score ''may'' have been used. The Board believes that modifying the language in model forms C–1 through C–5 as suggested by commenters would likely confuse consumers, would not be consistent with the statute, and would substantially decrease the value of the disclosures for consumers. Creditors may still use the language in the model form stating that the creditor ''used'' a credit score (instead of ''may have used''), even if there is some ambiguity regarding whether a credit score obtained by the creditor was considered in a judgmental evaluation. As discussed further below, the Board does not believe that section 1100F of the Dodd-Frank Act sets a high threshold for what constitutes use of a credit score.

Use of a credit score. In some cases, a creditor that is required to provide an adverse action notice under the FCRA may use a consumer report, but not a credit score, in taking the adverse action. Under section 1100F of the Dodd-Frank Act, a person is not required to disclose a credit score and related information if a credit score is not used in taking the adverse action. Therefore, the proposed amendments to Forms C–1 through C–5 generally were applicable only if a credit score was used in taking an adverse action. Some industry commenters stated that creditors should not be required to disclose credit score information when a creditor obtains but does not use a credit score, or when the credit score was not the primary cause of the adverse action decision.

Section 1100F of the Dodd-Frank Act requires disclosure if a credit score was used in taking adverse action. A creditor that obtains a credit score and takes adverse action is required to disclose that score, unless the credit score played no role in the adverse action determination. If the credit score was a factor in the adverse action decision, even if it was not a significant factor, the creditor will have used the credit score for purposes of section 1100F of the Dodd-Frank Act.

A trade association representing motor vehicle dealers submitted a

comment letter asserting that in certain three-party transactions where the dealer is the original creditor, the dealer should not be subject to the requirements of section 1100F, because a third party that purchases the debt obligation from the dealer obtains the creditor score, rather than the dealer. This issue is outside the scope of this rulemaking under Regulation B and the ECOA, because it seeks an interpretation of the FCRA as it applies to a particular type of transaction. This issue is addressed, however, in the FCRA rulemaking under section 1100F of the Dodd-Frank Act published elsewhere in today's **Federal Register** notice.

Disclosure that no credit score is available. In some cases, a creditor may try to obtain a credit score for an applicant, but the applicant may have insufficient credit history for the consumer reporting agency to generate a credit score. One commenter asked that the creditor have the option to provide the applicant notice that no credit score was available from a consumer reporting agency in the space available for the credit information disclosure.

Section 1100F only applies when a creditor uses a credit score in taking adverse action. The creditor cannot disclose credit score information if an applicant has no credit score. Nothing in section 1100F of the Dodd-Frank Act prevents a creditor, however, from providing the applicant notice that no credit score was available from a consumer reporting agency, although section 1100F does not require such notice.

Key factors. Several industry commenters argued that creditors should have flexibility to disclose only factors that substantially affected the credit score. They asserted that requiring creditors to disclose the top four key factors (or five factors if the number of inquiries made with respect to that consumer report is a key factor) is burdensome and expensive for creditors, is confusing and will be of limited value to consumers. In contrast, one commenter stated that creditors should be required to disclose all factors that affected the credit score, not just the top four (or five) key factors.

Section 1100F of the Dodd-Frank Act expressly requires disclosure of the top four (or five) key factors that adversely affected the credit score, whether or not the effect was substantial. A person taking adverse action must provide the consumer the information set forth in subparagraphs (B) through (E) of section 609(f)(1) of the FCRA. Section 609(f)(1)(C) of the FCRA requires disclosure of all of the key factors that adversely affected the credit score in the model used, up to four, subject to section 609(f)(9) of the FCRA, which states that if the key factors that adversely affected the credit score include the number of inquiries made with respect to the consumer report, the ''number of inquiries'' must be disclosed as a key factor.

An industry commenter requested clarification that a creditor is permitted to rely on and disclose the key factors provided by consumer reporting agencies, without verification by the creditor. The commenter further asked for guidance in the event that a consumer reporting agency does not provide the key factors with the score.

Under section 615(a) of the FCRA as amended by section 1100F of the Dodd-Frank Act, the person taking adverse action is responsible for providing the credit score disclosure, including the key factors adversely affecting the credit score. If a creditor is using a credit score purchased from a consumer reporting agency, the consumer reporting agency is in the best position to identify the key factors that affected the score, and the creditor could rely on that information in its disclosure to consumers. The Board acknowledges, however, that the contractual arrangements between creditors and consumer reporting agencies may vary as to how creditors will receive the credit score information necessary to comply with section 1100F. The imposition of requirements on consumer reporting agencies is not within the scope of this rulemaking under the ECOA.

The proposed amendment to comment 9(b)(2)–9 clarified that disclosing the key factors that adversely affected the consumer's credit score does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit. Some industry commenters suggested that creditors only disclose either the key factors adversely affecting the consumer's credit score or the specific reasons for the adverse action decision, but not both. Other industry commenters asked that creditors be permitted to provide the list of key factors or specific reasons only once when the key factors that adversely affected the consumer's credit score are the same as the specific reasons for taking adverse action. Commenters suggested making a cross-reference to the first list rather than providing a second list.

As explained in the proposed rule, the Board recognizes that a key factor(s) that adversely affected the consumer's credit score may be the same as a specific reason(s) for denying credit or taking other adverse action. However, some specific reasons for taking adverse action may be unrelated to a consumer's credit score, such as reasons related to the consumer's income, employment, or residency. Therefore, the Board continues to believe the disclosure of both the key factors that adversely affected the consumer's credit score and the specific reasons for denying credit or taking other adverse action is necessary to fulfill the separate requirements of the ECOA and the FCRA. The Board believes providing separate lists, and thus distinguishing factors that adversely affected the credit score from reasons for the adverse action determination, will be more useful and clearer for consumers.

Number of inquiries. Several industry commenters suggested that creditors not be required to disclose the ''number of inquiries'' as a key factor that adversely affected the credit score if the number of inquiries is not one of the top four key factors. In these cases, the commenters said that the effect of the number of inquiries on the credit score is marginal, so that disclosing the ''number of inquiries'' as a key factor may be confusing to consumers.

As discussed above, section 609(f)(9) of the FCRA states that if the number of inquiries is a key factor that adversely affected the consumer's credit score, that factor must be disclosed pursuant to section 609(f)(1)(C) of the FCRA, without regard to the numerical limitation. The FCRA accordingly requires disclosure of the ''number of inquiries'' as a key factor, regardless of whether it is one of the top four key factors.

Model Form C–3

In addition to the content added to each of Forms C–1 through C–5, the Board proposed to amend Form C–3 for clarity. Form C–3 is a model notice that can be used by creditors that use a proprietary credit scoring system in taking adverse action. Proprietary scores are those developed by or for a particular creditor, as opposed to those developed by consumer reporting agencies or by a scoring company for use by multiple creditors. In the proposal, the Board explained that discussing two different types of credit scoring systems on Form C–3 could be confusing for consumers.

The Board proposed to amend Form C–3 to clarify the differences between a proprietary score and a credit score obtained from a consumer reporting agency. The proposed form allowed creditors to remove the reference to credit scoring in the title of the form. The proposed text permitted creditors to

clarify that the consumer's application was processed by a system that assigns a numerical value to the various items of information the creditor considers when evaluating the consumer's application, rather than a credit scoring system. The proposed form also added topic headings to help distinguish a proprietary score from a credit score obtained from a consumer reporting agency when both types of scores are used in making the credit decision. As explained in the supplemental information to the proposal, a person may amend, at its option, Form C–3 to remove the references to a credit scoring system and add the additional headings, even if the creditor did not use both a proprietary score and a credit score obtained from a consumer reporting agency in taking adverse action. Form C–3 should help distinguish proprietary scores from credit scores obtained from consumer reporting agencies, even if both scores are not used in taking adverse action. For the reasons discussed below, the final rule adopts these additional changes to Form C–3.

Proprietary scores. Several industry commenters specifically asked for guidance on when a proprietary score would be deemed a credit score for purposes of disclosure under section 1100F of the Dodd-Frank Act. These commenters also asked for clarification on what information a creditor should disclose under section 1100F when a creditor uses a proprietary score in taking adverse action. Some industry commenters indicated that a proprietary score should not be required to be disclosed under section 1100F of the Dodd-Frank Act because Congress intended for this provision to apply only to credit scores that are obtained from consumer reporting agencies, and disclosing proprietary scores would be confusing to consumers. Consumer advocates suggested that all proprietary scores, in particular credit-based insurance scores, be subject to disclosure under section 1100F.

''Credit score'' for purposes of section 1100F of the Dodd-Frank Act is defined to have the same meaning as in section 609(f)(2)(A) of the FCRA, 15 U.S.C. 1681g(f)(2)(A). Specifically, section 609(f)(2)(A) of the FCRA defines a credit score to mean ''a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default.'' Accordingly, scores not used to predict the likelihood of certain credit behaviors, however, such as insurance scores or scores used to predict the likelihood of false identity, are not credit scores by definition, and thus are not required to be disclosed.

Most credit scores that meet the FCRA definition are scores that a creditor obtains from a consumer reporting agency. Section 609(f)(2)(A) of the FCRA specifically excludes some—but not all—proprietary scores. Some lenders develop their own ''proprietary'' scores that may be based on one or more factors other than information in the consumer's credit report. For example, the definition of credit score does not include any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan-to-value ratio, the amount of down payment, or the financial assets of a consumer.

If a creditor uses a proprietary score that is based on one or more factors that are not information obtained from a consumer reporting agency, this proprietary score is not a credit score for purposes of section 1100F of the Dodd-Frank Act and thus does not need to be disclosed to the consumer. However, if the proprietary score is the basis for the adverse action, the creditor would be required to disclose the reasons the consumer did not score well compared to other applicants. *See* § 202.9(a)(2)(i). The creditor may disclose those reasons in the ''Reasons for Denial of Credit'' section of Form C–3.

If a creditor uses a proprietary score that does not meet the definition of a credit score for purposes of section 609(f)(2)(A) of the FCRA and does not use a credit score from a consumer reporting agency, the creditor would not be required to comply with section 1100F of the Dodd-Frank Act, because the creditor would not have used a credit score, as defined by section 609(f)(2)(A) of the FCRA, in taking any adverse action. In that case, a creditor may use Form C–3, deleting the heading and information about the consumer's credit score. A creditor may amend Form C–3, at its option, to add the additional headings and remove the references to a credit scoring system, even through the creditor did not use a credit score in taking adverse action. Form C–3 should help distinguish proprietary scores from credit scores obtained from consumer reporting agencies, even if both scores are not used in taking adverse action.

If the creditor uses both a proprietary score that does not meet the definition of a credit score and a credit score from a consumer reporting agency in taking adverse action, the creditor is only required to disclose the credit score from the consumer reporting agency under section 1100F of the Dodd-Frank Act. The creditor may use the ''Information About Your Credit Score'' section of Form C–3 to disclose the credit bureau score. Likewise, if a creditor uses a credit score from a consumer reporting agency as an input to a proprietary score but the proprietary score itself is not a credit score as defined in section 609(f)(2)(A) of the FCRA, the creditor would disclose the credit score from the consumer reporting agency per the requirements of section 1100F of the Dodd-Frank Act. Again, the creditor may use the ''Information About Your Credit Score'' section of Form C–3 to disclose the credit bureau score.

In contrast, a creditor in taking adverse action may have used a proprietary score that only includes information obtained from a consumer reporting agency. In that case, the proprietary score would be a credit score under section 609(f)(2)(A) of the FCRA. In such cases, the creditor is required to comply with section 1100F of the Dodd-Frank Act and may use Form C–3. As noted in paragraph 3 of Appendix C, the model forms are illustrative and may not be appropriate for all creditors. Creditors should thus modify Form C–3 as necessary. Specifically, the creditor should modify the ''Information about Your Credit Score'' section in Form C–3 to reflect that the creditor did not obtain a credit score from a consumer reporting agency, but rather used a proprietary score that met the definition of a credit score under section 609(f)(2)(A) of the FCRA in taking adverse action. The creditor should disclose the value of the proprietary score, the date, the range of proprietary scores, and the key factors adversely affecting the consumer's proprietary score.

Commenters also asked for guidance on what information to disclose under section 1100F of the Dodd-Frank Act when a creditor uses both a proprietary score that meets the definition of a credit score, and a credit score from a consumer reporting agency in taking adverse action. If the proprietary score is the basis for the adverse action, under Regulation B the creditor would be required to disclose the reasons the consumer did not score well compared to other applicants, for the proprietary score. See § 202.9(a)(2)(i). The creditor may disclose those reasons in the ''Reasons for Denial of Credit'' section of Form C–3. In addition, under the FCRA the creditor must disclose one of the scores that it used in taking adverse action and may do so in the ''Information About Your Credit Score'' section in Form C–3. If the creditor chooses to disclose the proprietary

score, it would amend Form C–3 as discussed above. If the creditor chooses to disclose the credit score from a consumer reporting agency, the creditor would disclose the value of the credit score, the date, the range of credit scores, and the key factors adversely affecting the consumer's credit score.

Other comments on Form C–3. One commenter highlighted language in Form C–3 that describes a proprietary score as based on the repayment histories of a large number of the creditor's consumers. The commenter thought it potentially misleading to indicate that a proprietary score is only based on repayment histories rather than on an evaluation of different categories. The commenter asked that the Board revise Form C–3 so that consumers clearly understand the difference between proprietary and other scores.

This issue is outside the narrow scope of this rulemaking to revise the model forms consistent with section 1100F of the Dodd-Frank Act. Moreover, the model forms are illustrative and may not be appropriate for all creditors. See paragraph 3 of Appendix C. The instructions to the model forms provide examples of when a creditor should amend the forms to ensure that they accurately reflect the creditor's actual practices. See paragraph 4 of Appendix. If a proprietary score is not solely based on the repayment histories of a large number of the creditor's consumers, the creditor can amend the language to describe what the proprietary score is based on. Further, Form C–3 includes a disclosure of the principal reasons why a consumer's proprietary score is lower than the scores for the creditor's other consumers. This list of reasons may provide consumers with a fuller understanding of the difference between proprietary and other scores.

Form of the Notices

As discussed above, the Board proposed to revise Forms C–1 through C–5 to incorporate disclosures required by section 1100F of the Dodd-Frank Act and include, as applicable, a statement that the creditor obtained the consumer's credit score from a consumer reporting agency named in the notice, and used the score in making the credit decision. The proposed model notices also stated that a credit score is a number that reflects the information in the consumer's consumer report, and that the consumer's credit score can change, depending on how the information in the consumer report changes. The proposed model notices provided space for the creditor to include the content required under section 1100F of the Dodd-Frank Act that is specific to the consumer. This content includes: The consumer's credit score, the date the credit score was created, the range of possible credit scores under the model used, and up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor).

The Board proposed to include these new disclosures primarily in a narrative format. In addition, the Board proposed to add this additional information to the end of the model forms, after information related the reasons for why adverse action was taken, and a statement that the creditor obtained information from a consumer reporting agency.

The Board received several comments on the format of the proposed model forms, as discussed in more detail below. For the reasons discussed below, the final rule retains the format of the credit score information in the model forms, as proposed.

Order of content. An industry commenter asked that the credit score information precede information regarding the consumer report in the model forms. The final rule retains the order of the content of the model forms as proposed. The Board believes that it is appropriate to disclose the information related to consumer reports first because the primary purpose of the adverse action notices is to alert consumers that adverse action was taken as a result of their consumer reports.

Further, in the proposed format the content logically progresses from more general consumer report information to more specific credit score information. In addition, because a creditor may still use Forms C–1 through C–5 when the creditor does not use the consumer's credit score in taking adverse action, providing the credit score information after the consumer report information will promote ease of use for creditors. Because the credit score information comes at the end of Forms C–1 through C–5, it may be easier for a creditor to delete that information from the forms in cases where the creditor did not use a credit score in taking adverse action.

Disclosing credit score information on a separate document. Several industry commenters requested a model form that consumer reporting agencies could use to provide creditors the credit score information needed for adverse action notices under section 1100F of the Dodd-Frank Act. These commenters asked that creditors be permitted to attach the consumer reporting agency's form to their adverse action notices, and provide both documents to the consumer. These commenters did not believe that the creditor should be required to integrate the credit score information into its adverse action notice.

Section 615(a)(1) of the FCRA requires a creditor to provide notice of adverse action to consumers against whom it takes adverse action based in whole or in part on information contained in a consumer report. Section 1100F of the Dodd-Frank Act amended Section 615(a) to require a creditor to provide such consumers credit score information. Providing a form with credit score information separately from an adverse action notice does not appear to be consistent with the legislation.

Use of graphs or table formats. Some industry commenters requested that creditors be permitted to use a graph or table format to provide the information in the model forms without losing the safe harbor for compliance with Regulation B. These commenters asserted that graphs, tables, and other visual devices may be clearer and more useful to consumers.

To comply with Regulation B, a creditor must provide the required disclosures in a clear and conspicuous manner, in a reasonably understandable format that does not obscure the required information. See § 202.4(d)(1). Use of a different format from the model forms, such as by adding graphs or tables, could meet this standard for compliance with the regulation, but this would be determined on a case by case basis.

Substitute Notices and Combined Notices

As discussed above, section 1100F of the Dodd-Frank Act amends section 615(a) of the FCRA to require creditors to disclose on FCRA adverse action notices a credit score used in taking any adverse action and information relating to that score. Creditors might, however, disclose credit score information to consumers to satisfy other disclosure requirements. Specifically, in January 2010, the Board and the Federal Trade Commission (the Agencies) published final rules to implement the risk-based pricing provisions in section 311 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amended the FCRA (January 2010 Final Rule). 75 FR 2724. The January 2010 Final Rule generally requires a creditor to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than

the most favorable terms available to a substantial proportion of consumers from or through that creditor. See § 222.72; § 640.3. The January 2010 Final Rule provides exceptions to the requirements to provide general risk-based pricing notices for persons that provide certain credit score disclosure notices to consumers who request credit (so called ''credit score disclosure exception notices''). See §§ 222.74(d), (e), and (f); §§ 640.5(d), (e), and (f). In addition, section 609(g) of the FCRA requires creditors to provide credit score information to consumers applying for loans secured by one to four units of residential real property.

For loans secured by one to four units of residential real property, the credit score disclosure exemption notice would be required to be provided to the consumer concurrently and combined with the notice required by section 609(g) of the FCRA, but in any event, at or before consummation of a closed-end credit transaction or before the first transaction under an open-end credit plan. § 222.74(d)(3). Section 609(g)(1) of the FCRA states that the notice required by that subsection must be provided to the consumer ''as soon as reasonably practicable.'' In the January 2010 Final Rule, the Agencies noted that industry practice is generally to provide the credit score disclosure within three business days of obtaining a credit score and the Agencies would expect the integrated disclosure generally would be provided within the same timeframe. 75 FR 2741. For loans not secured by one to four units of residential real property, the credit disclosure exemption notice must be provided to the consumer as soon as reasonably practicable after the credit score has been obtained, but in any event at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan. § 222.74(e)(3).

Some industry commenters asked the Board to clarify that if a creditor provides credit score exception notices or section 609 notices to consumers, the creditor would not be required to include the disclosures required by section 1100F of the Dodd-Frank Act in the adverse action notice. One industry commenter also requested that the Board clarify that a creditor is allowed to combine the section 609(g) notice with an adverse action notice. For the reasons discussed below, the Board does not believe a creditor would comply with the FCRA adverse action provisions in section 1100F by providing a credit score disclosure exception notice or section 609(g) notice. In addition, the Board does not believe that the 609(g) notice may be integrated into a FCRA adverse action notice.

Substitute notices. One industry commenter asked the Board to clarify that if a creditor provides credit score disclosure exception notices in connection with all loan applications, the creditor would not be required to include the credit score disclosures required by section 1100F of the Dodd-Frank Act in the adverse action notice.

In addition, one industry commenter suggested that if a creditor provides consumers with the disclosures required by section 609(g) of the FCRA, the creditor should not be required to disclose credit score information under section 1100F of the Dodd-Frank Act in the adverse action notice. This commenter noted that the credit score might change between the 609(g) disclosure and adverse action notice, leading to consumer confusion. The commenter argued that Congress likely did not intend consumers to receive multiple credit disclosures in connection with a single transaction.

The Board does not believe a creditor would comply with the FCRA adverse action provisions by providing a credit score disclosure exception notice or section 609(g) notice. These notices provide different information and have different timing requirements than the adverse action notice. In addition, the credit score disclosed on the credit score disclosure exception notice or section 609(g) notice might not be the credit score used in taking adverse action. For example, for purposes of the credit score disclosure exception notice, if a person uses a credit score that was not created by a consumer reporting agency, such as a proprietary score, that person is permitted to disclose either the proprietary score or a credit score it obtained from an entity regularly engaged in the business of selling credit scores, even if the latter credit score was not used in the credit decision. Nonetheless, in that circumstance, the FCRA adverse action notice must contain the proprietary score under 1100F. As discussed above, if a creditor uses a proprietary ''credit'' score in taking adverse action and does not use a credit score from a consumer reporting agency, the creditor must disclose information about the proprietary score under section 1100F.

Combined notices. One industry commenter requested that the Board clarify that a creditor is allowed to combine the section 609(g) notice with a FCRA adverse action notice. The Board does not believe a creditor would comply with the FCRA adverse action provisions by combining the section 609(g) notice with an adverse action notice for the reasons discussed above. In addition, the Board believes that allowing the section 609(g) notice to be combined with the adverse action notice might detract consumers from the primary purposes of the adverse action notice, which is to notify the consumer that adverse action has been taken.

Co-Applicants

Several industry commenters asked who should receive an adverse action notice when a credit application involves multiple applicants. These commenters stated that applicants should not receive each other's credit scores. They also recommended adding language to the model forms to indicate that for co-applicants, the adverse action decision may be based on either or both of the applicants' credit information. They explained that such language would decrease consumer confusion, since an applicant with an excellent credit profile who receives an adverse action notice may not realize that the adverse action decision may have been made because of the co-applicant's credit profile.

Section 202.9(f) of Regulation B permits a creditor to provide an adverse action notice to only one applicant, and requires a creditor to provide an adverse action notice to the primary applicant, when a primary applicant is readily apparent. In contrast, section 615(a) of the FCRA requires a creditor to provide the disclosures mandated by that section to ''any consumer'' against whom adverse action is taken, if the adverse action is based in whole or in part on information from a consumer report. The FCRA's reference to ''any consumer'' would seem to include co-applicants. Given privacy and customer relations concerns, the Board expects that creditors would generally provide separate FCRA adverse action notices to each applicant with only the individual's credit score on each notice.

As discussed above, several commenters recommended adding language to the model forms to indicate that for co-applicants, the adverse action decision may be based on either or both of the applicants' credit information. The Board believes that providing this additional language on the model forms would complicate the disclosures without providing a substantial benefit to consumers. An applicant with strong credit who receives an adverse action notice will likely understand that the adverse action decision was based on the co-applicant's credit information or will contact the creditor to inquire.

Guarantors and Co-Signers

An application may involve a guarantor or co-signer. Some industry commenters asked whether a guarantor or co-signer should receive an adverse action notice. These commenters also asked whether the guarantor's or co-signer's credit score should be disclosed to the applicant, where the creditor uses the guarantor's or co-signer's credit score in taking adverse action.

Under section 701(d)(6) of the ECOA and § 202.2(c) of Regulation B, only an applicant can experience adverse action. Further, a guarantor or co-signer is not deemed an applicant under § 202.2(e). Sections 603(k)(1)(A) and 603(k)(1)(B)(2) of the FCRA provide that adverse action has the same meaning for purposes of the FCRA as is provided in the ECOA and Regulation B in the context of a credit application. Therefore, a guarantor or co-signer would not receive an adverse action notice under the ECOA or the FCRA. The credit applicant would, however, receive an adverse action notice, even if the adverse action decision is made solely based on information in the guarantor's or co-signer's consumer report. Section 1100F of the Dodd-Frank Act does not address whether, in this circumstance, the adverse action notice received by an applicant under the FCRA should include a guarantor or co-signer's credit score. The Board does not believe, however, that Congress intended for an individual to receive another individual's credit score. Section 609(f)(2) of the FCRA associates a credit score with a particular individual. The Board accordingly believes that a guarantor or co-signer's credit score should not be disclosed to an applicant in an adverse action notice.

Multiple Scores

Some creditors may obtain multiple credit scores from consumer reporting agencies in connection with their underwriting processes. A creditor may use one or more of those scores in taking adverse action. Section 1100F of the Dodd-Frank Act only requires a person to disclose a single credit score used in taking adverse action.

When a creditor obtains multiple scores but only uses one in making the decision, the creditor must disclose the credit score that it used. Commenters asked what credit score or scores creditors should disclose when creditors use multiple scores in taking adverse action, for example, from different consumer reporting agencies. Section 1100F of the Dodd-Frank Act does not specify what credit score should be disclosed in such cases, but only requires a person to disclose a single credit score that is used by the person in making the credit decision. A creditor would comply with the statute by disclosing any of the credit scores that it used. The Board expects that creditors will have policies and procedures to determine which of the multiple credit scores was used in taking adverse action. For instance, a creditor could have policies and procedures specifying that: (1) When the creditor obtains or creates multiple credit scores but only uses one of those credit scores in taking adverse action, for example, by using the low, middle, high, or most recent score, the creditor would disclose that credit score and information relating to that credit score; and (2) when a creditor uses multiple credit scores in taking adverse action, for example, by computing the average of all the credit scores obtained, the creditor would disclose any one of those credit scores and information relating to the credit score.

Because credit scoring models may differ considerably in nature and the range of scores used, consumers would not necessarily benefit if they receive and try to compare multiple scores. Disclosing multiple credit scores could confuse consumers who do not understand the differences, which might lessen the value of the section 1100F disclosures. Moreover, section 1078(a) of the Dodd-Frank Act requires the Consumer Financial Protection Bureau (CFPB) to conduct a study of the different credit scoring systems, and whether these variations disadvantage consumers. The CFPB's study might develop a record that could serve as the basis for reconsidering this issue in a future rulemaking.

Adverse Actions Not Limited to Credit

An industry commenter asked whether credit score information under section 1100F of the Dodd-Frank Act must be disclosed in FCRA adverse action notices for non-lending products. This commenter notes that the definition of ''credit score'' for purposes of section 1100F of the Dodd-Frank Act refers to a credit score ''used by a person who makes or arranges a loan.'' The commenter asserted argued that Congress intended to limit the section 1100F disclosures to credit decisions.

Section 202.2(c) of the ECOA limits the definition of adverse action to decisions regarding credit. The FCRA, however, does not include such a limitation. See section 603(k)(1) of the FCRA. The FCRA therefore applies to adverse action decisions related to credit, but also decisions regarding, for example, a deposit account, insurance product, or employment. Although a credit score may generally be used in making or arranging loans, a credit score may also be used in taking adverse action not related to credit. The Board believes that a person would need to disclose a credit score obtained from a consumer reporting agency as part of the adverse action notice as set forth in section 1100F of the Dodd Frank Act, even if the person used the credit score to take adverse action for a non-lending product. In requiring credit score disclosures, section 1100F does not state that the credit score disclosures are only required for adverse action decisions related to credit.

Implementation Date

Some industry commenters asked that the Board delay the rule's implementation date by 6 months to at least 12 months. One commenter suggested that the Board stay the rulemaking, and let the CFPB finalize the rule.[3] Another commenter requested that creditors should receive a safe harbor for using the proposed model forms until creditors can implement the requirements in the final rule.

Section 1100F of the Dodd-Frank Act is self-effectuating and will become legally effective on July 21, 2011, even if there are no implementing rules or model forms. To provide guidance to institutions in establishing their compliance programs, this final rule will become effective 30 days after the date of publication in the **Federal Register.**

III. Regulatory Analysis

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521; 5 CFR part 1320 Appendix A.1), the Board reviewed the final rulemaking under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this final rulemaking is found in 12 CFR part 202. In addition, as permitted by the PRA, the Board will extend for three years the current recordkeeping and disclosure requirements in connection with Regulation B. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0201.

Section 703(a)(1) of the Equal Credit Opportunity Act (15 U.S.C. 1691b(a)(1)) authorizes the Board to issue regulations

[3] Rule writing authority under the FCRA will transfer to the CFPB on July 21, 2011.

to carry out the provisions of the Act. The purpose of the Act is to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance income, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et seq.*). This information collection is mandatory.

Regulation B applies to all types of creditors, not just State member banks. However, under the PRA, the Board accounts for the burden of the paperwork associated with the regulation only for entities that are supervised by the Board. Appendix A of Regulation B defines these creditors as State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden for the institutions they supervise. Creditors are required to retain records for 12 to 25 months as evidence of compliance.

As discussed above, on March 15, 2011, the Board published in the **Federal Register** a notice of proposed rulemaking that is consistent with new content requirements in section 615(a) of the FCRA that were added by section 1100F of the Dodd-Frank Act. 76 FR 13896. The PRA comment period expired on May 16, 2011.

In the proposal, the Board estimated that respondents potentially affected by the additional notice would take, on average, 16 hours (2 business days) to update their systems and modify model notices to comply with the proposed requirements. The Board recognized that the amount of time needed for any particular creditor subject to the proposed requirements may be higher or lower, but believed this average figure was a reasonable estimate.

Several industry commenters believed that the Board underestimated the compliance burden of the proposed rule. These commenters asserted that compliance would require between 2 weeks and 8,000 hours.

Based on these comments, the Board is inclined to agree that some additional time beyond 16 hours may be needed. The Board, therefore, has revised upward its prior burden estimate. The Board believes that 32 hours (4 business days) is a reasonable estimate of the average amount of time to modify existing database systems to incorporate these new requirements. In addition, an industry commenter asked that the Board clarify whether the Board proposed to extend current recordkeeping requirements for 3 years, or to lengthen current recordkeeping requirements. As explained in the proposed rule, the Board is extending current recordkeeping and disclosure requirements for 3 years.

Entities affected by this final rule are already familiar with the existing adverse action provisions. It should not be overly burdensome to persons using a credit score when making the decision requiring an adverse action notice to add additional information to that notice. In addition, the Board has provided model notices that should significantly reduce the cost of compliance with the final rule.

B. Regulatory Flexibility Act

The Board prepared an initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) in connection with the proposed rule. The final rule covers certain banks, other depository institutions, and non-bank entities that take adverse action against consumers. The Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[4] The size standard to be considered a small business is: $175 million or less in assets for banks and other depository institutions; and $7 million or less in annual revenues for the majority of non-bank entities that are likely to be subject to the final rule. Under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the final rule will not have a significant economic impact on a substantial number of small entities. The Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small business entities. The Board recognizes that the final rule will affect some small business entities; however the Board does not expect that a substantial number of small businesses will be affected or that the final rule will have a significant economic impact on them, particularly in light of the information already required to be disclosed under section 615(a) of the FCRA. Nonetheless, the Board has decided to publish a final regulatory flexibility analysis with the final rule and has prepared the following analysis:

1. Reasons for the Final Rule

Section 1100F of the Dodd-Frank Act amends section 615(a) of the FCRA to require persons to disclose a credit score and information relating to that credit score in adverse action notices when the person uses a credit score in taking adverse action. Specifically, a person must disclose, in addition to the information currently required by section 615(a) of the FCRA: (1) A numerical credit score used in making the credit decision; (2) the range of possible scores under the model used; (3) up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor); (4) the date on which the credit score was created; and (5) the name of the person or entity that provided the credit score. The effective date of these amendments is July 21, 2011.

Certain model notices in Regulation B include the content required by both the ECOA and the FCRA adverse action provisions, so that creditors can use the model notices to comply with the adverse action requirements of both statutes. The Board is issuing the final rule to amend the combined ECOA–FCRA adverse action model notices in Regulation B pursuant to its existing authority under section 703(a) of the ECOA, to facilitate compliance with the new requirements under section 1100F of the Dodd-Frank Act.

2. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** above contains information on the objectives and legal basis of the final rule. The legal basis for the final rule is section 703(a) of the ECOA. The final rule is consistent with section 1100F of the Dodd-Frank Act.

3. Summary of Issues Raised by Commenters

Some industry commenters stated that the proposed rules would create substantial compliance burdens, particularly for small entities. They asked that small entities be exempt from the requirements, or that the Board delay the implementation date for small entities.

This issue is outside the scope of this rulemaking, because the Board does not have authority under the ECOA to carve

[4] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

out small entities from the requirements of section 1100F of the Dodd-Frank Act. Further, as discussed above, Congress set the effective date for section 1100F of the Dodd-Frank Act for July 21, 2011. Section 1100F is self-implementing and will become legally effective on July 21, 2011, even if there is no implementing regulation or model forms. The final rule will facilitate compliance by providing guidance for institutions in establishing their compliance programs, and will become effective 30 days after the date of publication in the **Federal Register**.

4. Description of Small Entities to Which the Final Rule Applies

The final rule applies to any person that (1) is required to provide an adverse action notice to a consumer; and (2) uses a credit score in making the credit decision requiring an adverse action notice. The total number of small entities likely to be affected by the final rule is unknown, because the Board does not have data on the number of small entities that use credit scores in taking adverse action in connection with consumer credit. The adverse action provisions of section 1100F of the Dodd-Frank Act have broad applicability to persons who use credit scores in taking adverse action in connection with the provision of consumer credit.

Based on estimates compiled by the Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, there are approximately 9,458 depository institutions that could be considered small entities and that are potentially subject to the final rule.[5] The available data are insufficient to estimate the number of non-bank entities that would be subject to the final rule and that are small as defined by the SBA. Such entities would include non-bank mortgage lenders, auto finance companies, automobile dealers, other non-bank finance companies, insurance companies, employers, telephone companies, and utility companies.

It also is unknown how many of these small entities that meet the SBA's size standards and that are potentially subject to the final rule use credit scores in taking adverse action in connection with the provision of consumer credit. The final rule does not, however, impose any requirements on small entities that do not use credit scores in taking adverse action in connection with consumer credit.

5. Projected Reporting, Recordkeeping and Other Compliance Requirements

The compliance requirements of the final rule are described in detail in the **SUPPLEMENTARY INFORMATION** above.

A person must currently determine if it takes adverse action in connection with the provision of consumer credit, based in whole or in part on consumer reports. If the person takes adverse action based on consumer reports, the person must provide adverse action notices with the information currently required by section 615(a) of the FCRA.

Section 1100F of the Dodd-Frank Act amends section 615(a) of the FCRA to require a person who takes adverse action and uses a credit score in making the adverse action determination to provide credit score information in the adverse action notice, in addition to the information currently required by section 615(a) of the FCRA. Under the FCRA, the person would need to design, generate, and provide notices that include the credit score information. This final rule provides model forms that may be used by creditors to comply with these new requirements.

The Board does not expect that the costs associated with this final rule will place a significant burden on small entities.

6. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the final rule. As discussed in Part II above, the amendments to the adverse action notices are consistent with section 1100F of the Dodd-Frank Act. The Board is issuing the final rule pursuant to its existing authority under section 703(a) of the ECOA. The amendments to the adverse action model notices have been designed to work in conjunction with the requirements of section 1100F of the Dodd-Frank Act to help facilitate uniform compliance when this section becomes effective.

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

The Board solicited comments on any significant alternatives consistent with section 703(a) of the ECOA and the provisions of section 1100F of the Dodd-Frank Act that would minimize the impact of the final rule on small entities. As noted above, several industry commenters suggested that small entities be exempt from the proposed rules, or that the Board delay the implementation date for small entities.

The Board has sought to minimize the economic impact on small entities by providing model notices to ease creditors' burden. As explained above, however, the Board does not have authority under the ECOA to carve out small entities from the requirements of section 1100F of the Dodd-Frank Act. In addition, Congress set the effective date for section 1100F of the Dodd-Frank Act for July 21, 2011. Section 1100F is self-implementing and will become legally effective on July 21, 2011, even if there is no implementing regulation. This final rule will provide guidance to institutions in establishing their compliance programs. Accordingly, the final rule will become effective 30 days after the date of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 202

Aged, Banks, Banking, Civil rights, Consumer protection, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set forth in the preamble, the Board amends 12 CFR part 202 and the Official Staff Commentary, as follows:

PART 202—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1693b.

■ 2. Section 202.12(b)(4) is amended as follows:

§ 202.12 Record retention.

* * * * *

(b) * * *

(4) *Enforcement proceedings and investigations.* A creditor shall retain the information beyond 25 months (12 months for business credit, except as provided in paragraph (b)(5) of this section) if the creditor has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this part, by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the Act and this regulation, or if it has been served with notice of an action filed pursuant to section 706 of the Act and § 202.16 of this part. The creditor shall retain the information until final disposition of the

[5] The estimate includes 1,459 institutions regulated by the Board, 659 national banks, and 4,099 federally-chartered credit unions, as determined by the Board. The estimate also includes 2,872 institutions regulated by the FDIC and 369 thrifts regulated by the OTS. *See* 75 FR 36016, 36020 (Jun. 24, 2010).

matter, unless an earlier time is allowed by order of the agency or court.

* * * * *

■ 3. Appendix C to Part 202 is amended by revising paragraph 2 and Forms C–1 through C–5 to read as follows:

APPENDIX C To Part 202—Sample Notification Forms

* * * * *

2. Form C–1 contains the Fair Credit Reporting Act disclosure as required by sections 615(a) and (b) of that act. Forms C–2 through C–5 contain only the section 615(a) disclosure (that a creditor obtained information from a consumer reporting agency that was considered in the credit decision and, as applicable, a credit score used in taking adverse action along with related information). A creditor must provide the section 615(a) disclosure when adverse action is taken against a consumer based on information from a consumer reporting agency. A creditor must provide the section 615(b) disclosure when adverse action is taken based on information from an outside source other than a consumer reporting agency. In addition, a creditor must provide the section 615(b) disclosure if the creditor obtained information from an affiliate other than information in a consumer report or other than information concerning the affiliate's own transactions or experiences with the consumer. Creditors may comply with the disclosure requirements for adverse action based on information in a consumer report obtained from an affiliate by providing either the section 615(a) or section 615(b) disclosure. Optional language in Forms C–1 through C–5 may be used to direct the consumer to the entity that provided the credit score for any questions about the credit score, along with the entity's contact information. Creditors may use or not use this additional language without losing the safe harbor, since the language is optional.

* * * * *

Form C–1—Sample Notice of Action Taken and Statement of Reasons Statement of Credit Denial, Termination or Change

Date: _____

Applicant's Name: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested Credit:

_____

_____

Description of Action Taken:

_____

_____

Part I—Principal Reason(s) for Credit Denial, Termination, or Other Action Taken Concerning Credit

This section must be completed in all instances.

____Credit application incomplete

____Insufficient number of credit references provided

____Unacceptable type of credit references provided

____Unable to verify credit references

____Temporary or irregular employment

____Unable to verify employment

____Length of employment

____Income insufficient for amount of credit requested

____Excessive obligations in relation to income

____Unable to verify income

____Length of residence

____Temporary residence

____Unable to verify residence

____No credit file

____Limited credit experience

____Poor credit performance with us

____Delinquent past or present credit obligations with others

____Collection action or judgment

____Garnishment or attachment

____Foreclosure or repossession

____Bankruptcy

____Number of recent inquiries on credit bureau report

____Value or type of collateral not sufficient

____Other, specify:_____

Part II—Disclosure of Use of Information Obtained From an Outside Source

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

____Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name: _____

Address: _____

_____

[Toll-free] Telephone number: _____

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score:_____

Date:_____

Scores range from a low of_____to a high of_____

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

_____

[Toll-free] Telephone number:]] _____

____Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:

Creditor's name: _____

Creditor's address: _____

Creditor's telephone number: _____

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–2—Sample Notice of Action Taken and Statement of Reasons

Date

Dear Applicant: Thank you for your recent application. Your request for [a loan/a credit card/an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Your Income:

____is below our minimum requirement.

____is insufficient to sustain payments on the amount of credit requested.

____could not be verified.

Your Employment:

____is not of sufficient length to qualify.

____could not be verified.

Your Credit History:

____of making payments on time was not satisfactory.

____could not be verified.

Your Application:

____lacks a sufficient number of credit references.

____lacks acceptable types of credit references.

____reveals that current obligations are excessive in relation to income.

Other: _____

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and [toll-free] telephone number of the reporting agency]. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the

information contained in your credit file at the consumer reporting agency. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. Any questions regarding such information should be directed to [consumer reporting agency]. If you have any questions regarding this letter, you should contact us at [creditor's name, address and telephone number].

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____

Date: _____

Scores range from a low of_____to a high of_____

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

_____

[Toll-free] Telephone number:_____]]

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–3—Sample Notice of Action Taken and Statement of Reasons [(Credit Scoring)]

Date

Dear Applicant: Thank you for your recent application for _____. We regret that we are unable to approve your request.

[**Reasons for Denial of Credit**]

Your application was processed by a [credit scoring] system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons you did not score well compared with other applicants were:

- Insufficient bank references
- Type of occupation
- Insufficient credit experience
- Number of recent inquiries on credit bureau report

[**Your Right to Get Your Consumer Report**]

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The consumer reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. It can be obtained by contacting: [name, address, and [toll-free] telephone number of the consumer reporting agency]. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

[**Information about Your Credit Score]**

We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____

Date: _____

Scores range from a low of _____to a high of_____

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

_____

[Toll-free] Telephone number:_____]]

If you have any questions regarding this letter, you should contact us at

Creditor's Name: _____

Address: _____

_____

Telephone: _____

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (with certain limited exceptions); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–4—Sample Notice of Action Taken, Statement of Reasons and Counteroffer

Date

Dear Applicant: Thank you for your application for _____. We are unable to offer you credit on the terms that you requested for the following reason(s):

_____

We can, however, offer you credit on the following terms:

_____

If this offer is acceptable to you, please notify us within [amount of time] at the following address: _____.

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and [toll-free] telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____

Date: _____

Scores range from a low of _____ to a high of _____

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

_____

[Toll-free] Telephone number:_____]]

You should know that the federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex,

marital status, age (provided the applicant has the capacity to enter into a binding contract), because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name and address of the appropriate federal enforcement agency listed in appendix A].

Sincerely,

Form C–5—Sample Disclosure of Right to Request Specific Reasons for Credit Denial Date

Dear Applicant: Thank you for applying to us for _____.

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time. If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's Name

Address

Telephone Number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and [toll-free] telephone number is shown below. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. [You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.] You have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you received is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name

Address

[Toll-free] Telephone number

[We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: _____

Date: _____

Scores range from a low of _____ to a high of _____

Key factors that adversely affected your credit score:

_____

_____

_____

_____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address: _____

_____

[Toll-free] Telephone number:_____]]

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

* * * * *

■ 4. Supplement I to part 202 is amended by revising paragraph 9(b)(2)–9 to read as follows:

Supplement I to Part 202—Official Staff Interpretations

* * * * *

Section 202.9—Notifications

* * * * *

Paragraph 9(b)(2)

* * * * *

9. *Combined ECOA–FCRA disclosures.* The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act (FCRA) requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or its own files. Disclosing that a consumer report was obtained and used in the denial of the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy § 202.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinquent credit obligations. The FCRA also requires a creditor to disclose, as applicable, a credit score it used in taking adverse action along with related information, including up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor). Disclosing the key factors that adversely affected the consumer's credit score does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit. Sample forms C–1 through C–5 of Appendix C of the regulation provide for both the ECOA and FCRA disclosures. See also comment 9(a)(2)–1.

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 6, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–17585 Filed 7–14–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 222

[Regulation V; Docket No. R–1407]

RIN 7100–AD66

FEDERAL TRADE COMMISSION

16 CFR Parts 640 and 698

RIN R411009

Fair Credit Reporting Risk-Based Pricing Regulations

AGENCIES: Board of Governors of the Federal Reserve System (Board) and Federal Trade Commission (Commission).

ACTION: Final rules.

SUMMARY: On January 15, 2010, the Board and the Commission published final rules to implement the risk-based pricing provisions in section 311 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amended the Fair Credit Reporting Act (FCRA). The final rules generally require a creditor to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor. The Board and the Commission are amending their respective risk-based pricing rules to require disclosure of credit scores and information relating to credit scores in risk-based pricing notices if a credit score of the consumer is used in setting the material terms of credit. These final rules reflect the new requirements in section 615(h) of the FCRA that were added by section 1100F of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

DATES: These rules are effective August 15, 2011.

FOR FURTHER INFORMATION CONTACT: *Board:* Krista P. Ayoub, Counsel; Mandie K. Aubrey or Nikita M. Pastor, Senior Attorney; or Catherine Henderson, Attorney, Division of Consumer and Community Affairs, (202)

452–3667 or (202) 452–2412, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of a Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

Commission: Manas Mohapatra and Katherine White, Attorneys, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–2252, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION [1]:

I. Background

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) was signed into law on December 4, 2003. Public Law 108–159, 117 Stat. 1952. Section 311 of the FACT Act added section 615(h), 15 U.S.C. 1681m(h), to the Fair Credit Reporting Act (FCRA) to address risk-based pricing. Risk-based pricing refers to the practice of setting or adjusting the price and other terms of credit offered or extended to a particular consumer to reflect the risk of nonpayment by that consumer. Information from a consumer report is often used in evaluating the risk posed by the consumer. Creditors that engage in risk-based pricing generally offer more favorable terms to consumers with good credit histories and less favorable terms to consumers with poor credit histories.

Under section 615(h) of the FCRA, a person generally must provide a risk-based pricing notice to a consumer when the person uses a consumer report in connection with an extension of credit and, based in whole or in part on the consumer report, extends credit to the consumer on terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers. The risk-based pricing notice is designed primarily to improve the accuracy of consumer reports by alerting consumers to the existence of negative information in their consumer reports, so that consumers can, if they choose, check their consumer reports for accuracy and correct any inaccurate information. The Board and the Commission (the Agencies) jointly published regulations implementing these risk-based pricing provisions on January 15, 2010, which had a mandatory compliance date of January 1, 2011. 75 FR 2724 (January 2010 Final Rule).

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was signed into law. Pub. L. 111–203, 124 Stat. 1376. Section 1100F of the Dodd-Frank Act amends section 615(h) of the FCRA to require that additional content be disclosed to consumers in risk-based pricing notices; specifically, if a credit score is used in making the credit decision, the creditor must disclose that score and certain information relating to the credit score. The effective date of these amendments is July 21, 2011.[2]

The Agencies published proposed regulations and model forms to reflect these requirements on March 15, 2011. 76 FR 13902. The comment period closed on April 14, 2011, and comments on the Paperwork Reduction Act analysis closed on May 16, 2011. The Agencies received more than 35 comment letters regarding the proposal from banks and other creditors, industry trade associations, consumer groups, individual consumers, and others.

Title X of the Dodd-Frank Act also establishes a Bureau of Consumer Financial Protection (the Bureau), to which rulewriting authority for certain consumer protection laws will transfer. Section 1088(a)(9) of the Dodd-Frank Act amends section 615(h)(6) to provide that rulewriting authority for section 615(h) will transfer to the Bureau. Pursuant to section 1100H of the Dodd-Frank Act, however, this rulewriting authority does not transfer to the Bureau until July 21, 2011.[3] Thus, rulewriting authority for the risk-based pricing provisions of the FCRA, including the amendments prescribed by section 1100F of the Dodd-Frank Act, will not be vested in the Bureau until the date that the section 1100F amendments become effective.

The Agencies believe it is important to have implementing regulations and revised model forms in place as close as possible to July 21, 2011. This will help ensure that consumers receive consistent disclosures of credit scores and information relating to credit scores, and will help facilitate uniform compliance when section 1100F of the Dodd-Frank Act becomes effective.

Accordingly, the Agencies are finalizing amendments to the risk-based pricing rules and notices to incorporate the additional content required by section 1100F of the Dodd-Frank Act, pursuant to their existing authority under section 615(h) of the FCRA. Section 615(h) gives the Agencies the authority to issue rules implementing the risk-based pricing provisions, and requires the Agencies to address in those rules the form, content, timing, and manner of delivery of risk-based pricing notices.

In particular, section 615(h)(5) prescribes certain content requirements for the risk-based pricing notices, but provides that the required content elements are the minimum that must be disclosed. Moreover, section 615(h)(6)(B)(iv) provides that the Agencies must provide a model notice that can be used to comply with section 615(h). Therefore, the Agencies have the authority to add content to the risk-based pricing notices that they deem appropriate. The Agencies believe that adding to the requirements for the risk-based pricing notice the content required by section 1100F of the Dodd-Frank Act, and providing revised model notices is appropriate to avoid consumer confusion, and to ensure timely and consistent compliance with the new content provisions.

As discussed more fully below, the Agencies received some comments from industry and consumer advocates that did not relate to the changes to the model notices to incorporate the section 1100F requirements, such as a new request to exempt certain entities from the risk-based pricing rules entirely. Given the impending transfer of rulemaking authority to the Bureau, however, the Agencies are not making changes to the risk-based pricing rules and notices beyond those required by section 1100F of the Dodd-Frank Act. Such changes are beyond the scope of this rulemaking.

II. Section-by-Section Analysis

Section ____.73 Content, Form, and Timing of Risk-Based Pricing Notices.

Section ____.73(a) Content of the Notice

Content

Section 615(h) of the FCRA requires a person to include certain information in a risk-based pricing notice. The January 2010 Final Rule implements the general

[1] The Board is placing the final rules in the part of its regulations that implements the FCRA—12 CFR PART 222. For ease of reference, the discussion in the **SUPPLEMENTARY INFORMATION** section uses the numerical suffix of each of the Board's regulations. The FTC also is placing the final rules and model forms in the part of its regulations implementing the FCRA, specifically, 16 CFR part 640. However, the FTC uses different numerical suffixes that equate to the numerical suffixes discussed in the **SUPPLEMENTARY INFORMATION** section as follows: suffix .70 = FTC suffix .1, suffix .71 = FTC suffix .2, suffix .72 = FTC suffix .3, suffix .73 = FTC suffix .4, suffix .74 = FTC suffix .5, and suffix .75 = FTC suffix .6.

[2] Section 1100H of the Dodd-Frank Act provides that the amendments in Subtitle H of Title X, which includes Section 1100F, become effective on a ''designated transfer date.'' The Secretary of the Treasury set the designated transfer date as July 21, 2011. 75 FR 57252 (Sept. 20, 2010).

[3] Section 1100H of the Dodd-Frank Act provides that the amendments in Subtitle H of Title X, which includes Section 1088, become effective on a ''designated transfer date.'' The Secretary of the Treasury set the designated transfer date as July 21, 2011. 75 FR 57252 (Sept. 20, 2010).

content requirements for risk-based pricing notices in § 222.72(a)(1) and § 640.3(a)(1) (hereafter ''general risk-based pricing notice''). The January 2010 Final Rule also sets forth the content requirements for any risk-based pricing notice required to be given as a result of the use of a consumer report in an account review in § 222.72(a)(2) and § 640.3(a)(2) (hereafter ''account review notice'').

Section 1100F of the Dodd-Frank Act amends section 615(h) of the FCRA to require that creditors disclose additional information in risk-based pricing notices. Consistent with section 1100F of the Dodd-Frank Act, proposed ____.73(a)(1) and (a)(2) amended the content requirements of the general risk-based pricing notice and the account review notice, pursuant to section 615(h) of the FCRA. Proposed ____.73(a)(1)(ix) required a person to provide the additional content in a general risk-based pricing notice if a credit score of the consumer to whom a person grants, extends, or otherwise provides credit is used in setting the material terms of credit. Similarly, proposed ____.73(a)(2)(ix) required a person to provide the additional content in an account review notice if a credit score of the consumer whose extension of credit is under review is used in increasing the annual percentage rate.

Specifically, § ____.73(a)(1)(ix)(B)–(F) and § ___.73(a)(2)(ix)(B)–(F) of the proposed rules required the following disclosures: (1) the credit score [4] used by the person in making the credit decision; (2) the range of possible credit scores under the model used to generate the credit score; (3) all of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five; (4) the date on which the credit score was created; and (5) the name of the consumer reporting agency or other person that provided the credit score. In addition, to provide context for the additional content requirements, proposed § ____.73(a)(1)(ix)(A) and § ____.73(a)(2)(ix)(A) required a statement that a credit score is a number that takes into account information in a consumer report, and that a credit score can change over time to reflect changes in the consumer's credit history.

[4] ''Credit score'' is defined in the January 2010 Final Rule in ___.71(l) to have the same meaning as in section 609(f)(2)(A) of the FCRA, 15 U.S.C. 1681g(f)(2)(A). This is consistent with the definition of ''numerical credit score'' in section 1100F of the Dodd-Frank Act.

Industry commenters generally supported the additional content. Some industry commenters, however, requested additional flexibility in disclosing the factors that adversely affect the credit score, as discussed below. Consumer advocates suggested that the Agencies add additional information related to credit scores to the risk-based pricing notices, as discussed below. For the reasons discussed below, the final rules adopt the changes to § __.73(a)(1)(ix)(A)–(F) and § ___.73(a)(2)(ix)(A)–(F), as proposed, with an addition to clarify that the credit score was used in setting the terms of credit.

Key factors. Several industry commenters and a consumer advocate argued that creditors should have flexibility to disclose only factors that substantially affected the credit score. They asserted that requiring creditors to disclose the top four key factors (or five factors if the number of enquiries made with respect to that consumer report is one of the key factors) was burdensome and expensive for creditors, and confusing and of limited value to consumers. In contrast, one commenter stated that creditors should be required to disclose all factors that affected the credit score, not just the top four key factors (or five factors if the number of enquiries made with respect to that consumer report is a key factor).

Section 1100F of the Dodd-Frank Act requires a person engaging in risk-based pricing to provide the consumer the information set forth in subparagraphs (B) through (E) of section 609(f)(1) of the FCRA. Section 609(f)(1)(C) of the FCRA requires disclosure of all of the key factors that adversely affected the credit score of the consumer in the model used, up to four, subject to section 609(f)(9) of the FCRA. This section requires that if the key factors that adversely affected the credit score include the number of enquiries made with respect to the consumer report, the number of enquiries must also be disclosed as a key factor. Because the statutes thus require disclosure of the top four (or five) key factors that adversely affected the credit score, the Agencies adopt § ____.73(a)(1)(ix)(B)–(F) and § ____.73(a)(2)(ix)(B)–(F) as proposed.

An industry commenter requested clarification that a creditor is permitted to rely on and disclose the key factors provided with the scores purchased from consumer reporting agencies, without verification. The commenter further asked for guidance in the event that a consumer reporting agency does not provide the key factors with the score.

Under section 1100F of the Dodd-Frank Act, the person setting the material terms of credit is responsible for providing the credit score disclosure, including the key factors adversely affecting the credit score. If a creditor is using a credit score purchased from a consumer reporting agency, the consumer reporting agency is in the best position to identify the key factors that affected the score. Thus, the creditor would need to and could rely on that information in its disclosure to consumers. With respect to the manner in which this information may be obtained from the consumer reporting agencies, the Agencies acknowledge that the contractual arrangements between creditors and consumer reporting agencies may vary as to how creditors will receive the credit score information necessary to comply with section 1100F, but do not believe that imposing specific disclosure requirements on consumer reporting agencies is within the scope of this rulemaking. In any event, creditors have two options: (1) they can write their contracts with consumer reporting agencies to require the consumer reporting agencies to provide them the key factors adversely affecting the credit score, or (2) they can choose to send credit score disclosure exception notices to all consumers applying for non-mortgage credit. See *Exception Notices,* below.

Number of enquiries. Several industry commenters suggested that creditors not be required to disclose the number of enquiries as a key factor that adversely affected the credit score if the number of enquiries is not one of the top four key factors. In these cases, the commenters said that the effect of the number of enquiries on the credit score is marginal, so that disclosing the number of enquiries as a key factor may be confusing to consumers.

As discussed above, section 609(f)(9) of the FCRA states that if the number of enquiries is a key factor that adversely affected the consumer's credit score, that factor must be disclosed pursuant to section 609(f)(1)(C) of the FCRA, without regard to the numerical limitation. The FCRA accordingly requires disclosure of the number of enquiries as a key factor, regardless of whether it is one of the top four key factors. Thus, the Agencies adopt the proposed provision without change.

Additional information regarding credit scores. Consumer advocates suggested that the Agencies add additional information related to credit scores to the risk-based pricing notices. Specifically, consumer advocates suggested that the risk-based pricing notice include an explanation that the

consumer does not have a single credit score, and that the credit score may vary with the consumer reporting agency, scoring model provider, or particular credit product for which the consumer applied. These commenters indicated that consumers need this information to help them understand why they are receiving a particular score that may not be the same as a generic score, such as a FICO or Vantage score.

The Agencies believe that requiring these additional disclosures might create ''information overload'' for consumers, and detract from the primary purpose of the credit score information, which is to inform consumers of the credit score that has been used to set the material terms of credit, or used in the review of the account. The Agencies agree, however, that a disclosure that informs the consumer that the disclosed score was used in setting the credit terms, or in review of the credit terms, would further consumer understanding. The Agencies are thus adding a requirement that the notice include this information. In addition, the Agencies are revising the model forms H–6 and H–7 in the Board's rule and B–6 and B–7 in the Commission's rule to add the statement: ''We used your credit score to set the terms of credit we are offering you,'' in the ''What you should know about your credit score'' box on the model forms. This statement mirrors a sentence on the current risk-based pricing notice, informing consumers that their credit report was used to set the terms of credit being offered.

Other comments on content. The January 2010 Final Rule requires that the risk-based pricing notice include a statement that the terms offered, such as the annual percentage rate, have been set based on information from a consumer report. Model Form H–1 adopted as part of the January 2010 Final Rule, and proposed Model Form H–6 state ''We used information from your credit report(s) to set the terms of the credit we are offering you, such as [Annual Percentage Rate/down payment].''

Some industry commenters objected to language in the final rules and model forms adopted as part of the January 2010 Final Rule that indicated that the terms of credit were ''set'' or ''based on'' information from a consumer report. These commenters instead recommended language stating that the terms of credit were ''based in whole or in part on information from a consumer report.'' The final rules retain the current language in the regulation and model forms, as described above. The Agencies believe that the current language in the regulation and model forms is more concise and understandable to consumers than the language suggested by the commenters.

Proprietary Scores

As discussed above, proposed ____.73(a)(1)(ix) required a person to provide the additional content (i.e., the credit score and related information) in a general risk-based pricing notice if a credit score of the consumer to whom a person grants, extends, or otherwise provides credit is used in setting the material terms of credit. Similarly, proposed ____.73(a)(2)(ix) required a person to provide the additional content in an account review notice if a credit score of the consumer whose extension of credit is under review is used in increasing the annual percentage rate.

Some industry commenters specifically asked when a proprietary score would be deemed a credit score for purposes of § ____.73. Proprietary scores are those developed by creditors themselves or for specific creditors, as opposed to those developed by consumer reporting agencies or large scoring companies such as FICO or Vantage Score for use by individual creditors. Commenters also asked for clarification regarding the information a creditor should disclose under § ____.73 and the model form a creditor should use when a creditor uses a proprietary score in setting the material terms of credit. Some industry commenters indicated that a proprietary score should not be required to be disclosed under section 1100F of the Dodd-Frank Act because Congress intended for this provision to apply only to credit scores that are obtained from consumer reporting agencies, and disclosing proprietary scores would be confusing to consumers. Consumer advocates suggested that all proprietary scores, in particular credit-based insurance scores, be subject to disclosure under § ____.73.

''Credit score'' for purposes of section 1100F of the Dodd-Frank Act and § ____.71(1) of the January 2010 Final Rule is defined to have the same meaning as section 609(f)(2)(A) of the FCRA, 15 U.S.C. 1681g(f)(2)(A). Specifically, section 609(f)(2)(A) of the FCRA defines a credit score to mean ''a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default[.]'' Accordingly, scores not used to predict the likelihood of certain credit behaviors, such as insurance scores or scores used to predict the likelihood of false identity, are not credit scores by definition, and thus are not required to be disclosed.

Most credit scores that meet the FCRA definition are scores that creditors obtain from consumer reporting agencies. Section 609(f)(2)(A) of the FCRA specifically excludes some—but notall—proprietary scores. The definition of credit score does not include any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan-to-value ratio, the amount of down payment, or the financial assets of a consumer.

Thus, if a creditor uses a proprietary score that is based on one or more of these factors in addition to information obtained from a consumer reporting agency, this proprietary score is not a credit score for purposes of § ____.71(1) and ____.73 and thus does not need to be disclosed to the consumer. If, however, the creditor uses both a proprietary score that does not meet the definition of a credit score and a credit score from a consumer reporting agency in setting the material terms of credit or reviewing the account, the creditor would disclose the credit score from the consumer reporting agency under § ____.73(a)(1)(ix) and ____.73(a)(2)(ix), as applicable. Similarly, if a creditor uses a credit score from a consumer reporting agency as an input to a proprietary score, but that proprietary score itself is not a credit score, the creditor would disclose the credit score from the consumer reporting agency under § ____.73. The creditor may use the ''Your Credit Score and Understanding Your Credit Score'' section of Forms H–6 and H–7 of the Board's rules and Forms B–6 and B–7 of the Commission's rules for these disclosures.

In contrast, if a creditor uses a proprietary score that only includes information acquired from a consumer reporting agency in setting the material terms of credit or reviewing the account, the proprietary score would be a credit score under section 609(f)(2)(A) of the FCRA. Commenters asked for guidance on how to disclose information required under § ____.73(a)(1)(ix) and ____.73(a)(2)(ix) when a creditor uses only a proprietary score deemed a credit score under 609(f)(2)(A) of the FCRA.

These commenters also suggested that the rules should permit creditors to purchase a credit score from a consumer reporting agency and disclose that credit score, instead of disclosing the proprietary score that is used in setting the material terms of credit or reviewing the account. Section 1100F of the Dodd-Frank Act requires disclosure of the

credit score used in setting the material terms of credit or reviewing the account. The Agencies do not believe that a creditor would comply with the statute by disclosing a different credit score purchased after setting the material terms of credit based on a proprietary score.

In these situations, the creditor should modify the ''Your Credit Score and Understanding Your Credit Score'' section of Forms H–6 and H–7 of the Board's rules and Forms B–6 and B–7 of the Commission's rules to reflect that the creditor did not obtain a credit score from a consumer reporting agency, but rather used a proprietary score that met the definition of a credit score under 609(f)(2)(A) of the FCRA in setting the material terms of credit or reviewing the account. The creditor should disclose the value of the proprietary score, the date, the range of proprietary scores, and the key factors adversely affecting the consumer's proprietary score. The creditor should indicate that it is the source of the proprietary score. Alternatively, the creditor has the option of providing all consumers requesting an extension of credit with a credit score disclosure exception notice pursuant to the January 2010 Final Rule discussed below.

Commenters also asked for guidance on what information to disclose under § ____.73(a)(1)(ix) and ____.73(a)(2)(ix) when a creditor uses both a proprietary score that meets the definition of a credit score, and a credit score from a consumer reporting agency in setting the material terms of credit or reviewing the account. Both scores would be deemed credit scores under section 609(f)(2)(A) of the FCRA. In such cases where both credit scores are used, a creditor has the option to choose which credit score to disclose, as detailed in § ____.73(d) discussed below. The creditor may use Forms H–6 and H–7 of the Board's rules and Forms B–6 and B–7 of the Commission's rules to comply with the requirements of § ____.73(a)(1)(ix) and ____.73(a)(2)(ix). If the creditor chooses to disclose the proprietary score, it would amend the model forms as discussed above. If the creditor chooses to disclose the credit score from a consumer reporting agency, the creditor would disclose the value of that credit score, the date, the range of credit scores, and the key factors adversely affecting the consumer's credit score. The creditor would indicate the consumer reporting agency that is the source of the credit score.

Use of a Credit Score

Section 1100F of the Dodd-Frank Act requires a risk-based pricing notice to include disclosure of a credit score used by a person in making the credit decision. A person who is required to provide a general risk-based pricing notice or account review notice may use a consumer report to set the credit terms offered or extended to consumers without using a credit score. In a case where a person does not use a credit score in making the credit decision requiring a risk-based pricing notice or account review notice, the person is not required to disclose a credit score and information relating to a credit score.

Several industry commenters agreed that creditors should not disclose a credit score when they do not use a credit score in making the credit decision. These commenters also asked that a creditor not be required to disclose credit score information when a creditor obtains but does not use a credit score, or when the credit score was not the cause of the risk-based pricing.

Section 1100F of the Dodd-Frank Act requires disclosure if a credit score was used in setting the material terms of credit. A creditor that obtains a credit score and engages in risk-based pricing would need to disclose that score, unless the credit score played no role in setting the material terms of credit. Moreover, even if the credit score was not a significant factor in setting the material terms of credit but was a factor in setting those terms, the creditor will have used the credit score for purposes of section 1100F of the Dodd-Frank Act.

With respect to the scope of the term ''use,'' the Agencies received one comment suggesting that the original creditor in certain three-party financing transactions should be considered outside the scope of the risk-based pricing rules altogether and, therefore, would not be required to provide a risk-based pricing notice. The risk-based pricing rules apply to the original creditor if that person ''uses a consumer report in connection with'' an application for credit. 15 U.S.C. 1681m(h)(1). The commenter contended that the original creditor does not obtain and thus does not ''use'' a consumer report; rather the consumer report is ''used'' by an underlying finance source. The Commission believes that this view of ''use'' is too narrow.

The specific financing situation raised in the comment involves an automobile financing transaction where an automobile dealer is the original creditor. In this three-party financing transaction, a consumer visits the automobile dealer and applies for financing by completing a loan application with the dealer. The dealer submits the loan application to one or more unrelated finance sources, which finance source(s) then conducts underwriting on the consumer's credit application. Based in whole or in part on the consumer report, the finance source(s) provides the dealer with an approval of the consumer's application and the wholesale buy rate at which the finance source(s) will purchase the resulting credit contract from the dealer. The dealer then selects the finance source to which it intends to assign the contract and determines which credit terms, including a retail finance rate (''APR''), it will offer the consumer. The commenter asserts that because the original creditor (the automobile dealer) does not directly obtain the consumer report and/or credit score from a consumer reporting agency, and instead relies upon the buy rates from the underlying financing sources, the original creditor does not ''use'' the consumer report and is outside the scope of the risk-based pricing rules. The Commission disagrees. The automobile dealer must provide the consumer with a risk-based pricing notice.[5]

The original creditor has ''used'' a consumer report in connection with an application for credit because the original creditor initiated the request that caused the financing source to obtain the consumer report and used the resulting information from the financing source to set the rate offered to consumers. Applying a causal, transaction-based analysis to the term ''use'' is consistent with the clear intent of Congress to provide consumers with information about the role that their credit history plays in setting the terms for credit.[6] In the scenario set forth above, the consumer report was used in connection with the application for credit made by the consumer to the automobile dealer because the consumer report was obtained by the financing source in order to fulfill a request made to it by the automobile dealer. The finance source has not obtained and used the consumer report and/or credit score independently of the automobile dealer. The finance source, at the behest of the automobile dealer, has obtained the reports and performed underwriting and has told the automobile dealer the wholesale buy rate at which it will

[5] If the finance source used a credit score in its underwriting, that automobile dealer must include that score in the risk-based pricing notice.

[6] This interpretation of ''use'' is also consistent with the January 2010 Final Rule, where the Agencies noted that the ''automobile dealer's use of a consumer report to determine which third-party financing source is likely to purchase the retail installment sales contract and at what 'buy rate' is conduct that fits squarely within the description of risk-based pricing in [the final rules].'' 75 FR 2730.

purchase the contract.[7] The original creditor incorporated the wholesale buy rate in the rate offered to the consumer, establishing a causal connection between the consumer report and the ultimate rate offered to the consumer.[8] The original creditor has therefore ''used'' the consumer report.[9]

Guarantors and Co-Signers

In some cases, a creditor may use the credit score of a guarantor, co-signer, surety, or endorser, but not a credit score of the consumer to whom it extends credit or whose extension of credit is under review. Proposed §§ ____.73(a)(1)(ix) and ____.73(a)(2)(ix) required a person to disclose a credit score and information relating to a credit score only when using the credit score of the consumer to whom it grants, extends, or otherwise provides credit or whose extension of credit is under review. As discussed in the January 2010 Final Rule, a person is not required to provide a risk-based pricing notice to a guarantor, co-signer, surety, or endorser.[10] A person may be required, however, to provide a risk-based pricing notice *to the consumer* to whom it grants, extends, or otherwise provides credit, even if the person only uses the consumer report or credit score of the guarantor, co-signer, surety, or endorser.

Some industry commenters and consumer advocates supported the proposed rules governing guarantors and co-signers. The Agencies continue to believe that the credit score of one consumer, such as a guarantor, co-signer, surety, or endorser, should not be disclosed to a different consumer entitled to receive a risk-based pricing notice. Therefore, when a person uses a credit score only of a guarantor, co-signer, surety, or endorser to set the terms of credit for the consumer to whom it extends credit or whose extension of credit is under review, a person shall not include a credit score in the general risk-based pricing notice or account review notice provided to the consumer.

Exception Notices

The Agencies note that the January 2010 Final Rule provides exceptions to the requirements to provide general risk-based pricing notices for persons that provide credit score disclosure exception notices to consumers who request credit. See §§ 222.74(d), (e), and (f); §§ 640.5(d), (e), and (f).

Many industry commenters argued that section 1100F of the Dodd-Frank Act does not affect creditors' option to provide credit score disclosure exception notices to all consumers instead of risk-based pricing notices. Consumer advocates, however, urged the Agencies to eliminate the credit score disclosure exceptions. Consumer advocates argued that giving creditors the option to provide exception notices would result in creditors rarely providing risk-based pricing notices. They stated that a key benefit of the exception notices in comparison to the risk-based pricing notices was that consumers received a free credit score. They asserted that section 1100F of the Dodd-Frank Act eliminated this comparative benefit of the exception notices by requiring that risk-based pricing notices also disclose credit scores. Consumer advocates argued that Congress did not eliminate the exception notices in the Dodd-Frank Act because the notices were created by regulation, and were not the product of Congress. Finally, consumer advocates stated that section 1100F of the Dodd-Frank Act required disclosure of the actual credit score used by the creditor, while exception notices could contain a generic credit score.

After the Dodd-Frank Act, there remain strong arguments for retaining the credit score disclosure exceptions. The January 2010 Final Rule, which includes the credit score disclosure exceptions, was published in January 2010 and became effective on January 1, 2011. Because the rules were published more than six months before the Dodd-Frank Act was enacted, Congress could have eliminated the credit score disclosure exceptions but did not do so. Moreover, the Agencies believe that the credit score disclosure exception notices continue to be consistent with the goals of, and underlying reasons for, the risk-based pricing rule, which are to provide consumers with education about their credit profiles and alert them to potentially inaccurate information in their consumer reports that could have a negative effect on the credit terms being offered to them. Eliminating the exception notices would result in fewer consumers receiving their credit score for free. To use the exception notice provision, a creditor must provide exception notices to all consumers who apply for credit. By contrast, a creditor must provide risk-based pricing notices only to consumers receiving less favorable terms from that particular creditor. Thus, whether a consumer with a particular credit profile would receive a risk based pricing notice may depend upon the creditor to which the consumer applies. As a result, some consumers of a given creditor may not get risk-based pricing notices because they do not receive materially less favorable terms from that creditor, even though they would generally receive materially less favorable terms from other creditors based on their credit profiles. The credit score disclosure exceptions arguably achieve a better result—by requiring creditors using the exception to provide notices to all consumers who apply for credit—consumers that would not have gotten any notice would instead receive a free credit score.[11] In addition, consumers are given exception notices earlier in the credit decision process, thus giving consumers an earlier opportunity to identify any potential inaccuracies in their consumer report.[12] Consumers benefit from knowing their credit score earlier, even if they do not yet know

[7] Indeed, it is unity of interest in the same credit transaction between the original creditor/automobile dealer and the underlying finance source that provides the permissible purpose pursuant to which the finance sources may obtain the consumer's report.

[8] The Commission notes that the statute employs the word ''obtain'' when addressing physical possession, lending further support that ''use'' must be a broader concept. *See* section 604(f) (providing that ''[a] person shall not *use or obtain* a consumer report for any purpose unless * * * the consumer report is *obtained* for a purpose for which the consumer report is authorized to be furnished [under the FCRA]''); section 604(b)(1)(a) (a consumer reporting agency cannot provide a consumer report for employment purposes unless the person who ''*obtains*'' the report provides a certification to the consumer reporting agency that, among other things, it will not be ''*used*'' in violation of state or federal law).

[9] The risk-based pricing rules require the ''original creditor'' to provide consumers with the necessary notices. If the automobile dealer, the original creditor in the situation described above, was not required to provide the risk-based pricing notice, consumers purchasing automobiles in three-party financing transactions would never receive a risk-based pricing notice or, in the alternative, a credit score disclosure exception notice. Further, if the responsibility for providing the risk-based pricing notice was to be shifted to the underlying finance sources in these types of transactions, consumers could receive multiple risk-based pricing notices per transaction from unfamiliar entities, a result which would not be beneficial to consumers. *See* 75 FR at 2730 (''a consumer would not benefit from receiving more than one risk-based pricing notice in connection with a single extension of credit and requiring multiple notices would increase compliance burdens and costs'').

[10] *See* 75 FR at 2731 (Jan. 15, 2010).

[11] In addition, some consumers may not receive a risk-based pricing notice even if they did not receive the most favorable terms from that creditor because creditors may not be able to precisely distinguish those consumers who received the most favorable terms from those who did not (or may have used a proxy method). See 75 FR 2736. By virtue of the fact that exception notices are provided to all consumers who apply for credit, the credit score disclosure exceptions avoid this problem.

[12] Credit score disclosure exceptions must be given as soon as is reasonably practicable and, in any event, no later than before consummation of the transaction, whereas risk-based pricing notices are required to be provided after the terms of credit are set.

what terms of credit they will be offered. This earlier notice gives consumers more time to consider, given their current credit profile, whether they want to continue with a credit transaction at that time.

On the other hand, by requiring that risk-based pricing notices disclose credit scores when the credit scores were used to set the terms of credit, section 1100F of the Dodd-Frank Act has eliminated one of the key comparative benefits of the credit score disclosure exception notices over the risk-based pricing notices.[13] Moreover, while the exception notices contain valuable information about how a consumer's credit score compares with the credit scores of others, it does not inform consumers that they may be receiving less favorable credit terms or an increase in their interest rate based on their consumer report and/or their credit score.

The Agencies note that eliminating the credit score disclosure exception notice would fundamentally change the structure of the risk-based pricing rules and may substantially affect compliance costs. Given that rulemaking authority will be transferred to the Bureau on July 21, 2011, the Agencies do not believe that it is appropriate to make a substantial and fundamental change to the rules at this time. The final rules are limited to implementing the requirements of section 1100F of the Dodd-Frank Act. Thus, the final rules retain the credit score disclosure exception notices.

Section ____.73(b) Form of the Notice

The Agencies provided model forms that may be used for compliance with the risk-based pricing requirements in Appendices H and B of the January 2010 Final Rule. Paragraph (b)(2) of section ____.73 of the January 2010 Final Rule clarifies how each of the model forms of the risk-based pricing notices required by §§ ____.72(a) and (c), and by § ____.72(d) may be used. Paragraph (b)(2) provides that appropriate use of the model forms contained in Appendices H–1 and H–2 of the Board's rules and Appendices B–1 and B–2 of the Commission's rules is deemed to comply with §§ ____.72(a) and (c), and § ____.72(d), respectively. Use of these model forms is optional.

Under the proposal, the Agencies amended Appendices H and B of the January 2010 Final Rule to add two new model forms in Appendices H–6 and H–7 of the Board's proposed rules and Appendices B–6 and B–7 of the Commission's proposed rules, for situations where a credit score and information relating to such credit score must be disclosed. See *Model Forms,* below. Proposed paragraph (b)(2) clarified that appropriate use of Model Form H–1 or H–6, or B–1 or B–6, is deemed to comply with the requirements of §§ ____.72(a) and (c). It also clarified that appropriate use of Model Form H–2 or H–7, or B–2 or B–7, is deemed to comply with the requirements of § ____.72(d).

The final rules adopt § ____.73(b) as proposed. The comments received on the proposed model forms are discussed below. See *Model Forms,* below.

Section ____.73(d) Multiple Credit Scores

Some creditors may obtain multiple credit scores from consumer reporting agencies in connection with their underwriting processes. A creditor may use one or more of those scores in setting the material terms of credit. Section 1100F of the Dodd-Frank Act only requires a person to disclose a single credit score that is used by the person in making the credit decision. The Agencies proposed § ____.73(d) to address situations where a creditor obtains multiple credit scores from consumer reporting agencies, or obtains a credit score from a consumer reporting agency in addition to using a proprietary score deemed a credit score under the FCRA, and must provide either a general risk-based pricing notice or an account review notice to a consumer.

Proposed § ____.73(d)(1) provided that when a person uses one of those credit scores in setting the material terms of credit, for example, by using the low, middle, high, or most recent score, the general risk-based pricing and account review notices are required to include that credit score and information relating to that credit score as required by proposed §§ ____.73(a)(1)(ix) and (a)(2)(ix). When a person uses two or more credit scores in setting the material terms of credit, for example, by computing the average of all the credit scores obtained, the notices are required to include any one of those credit scores and information relating to the credit score as required by proposed §§ ____.73(a)(1)(ix) and (a)(2)(ix). The notice may, at the person's option, include more than one credit score, along with the information specified in proposed §§ ____.73(a)(1)(ix) and (a)(2)(ix) for each credit score disclosed.

Proposed § ____.73(d)(2) provided examples to illustrate the notice requirements for creditors that obtain multiple credit scores from consumer reporting agencies. The first example described in proposed § ____.73(d)(2)(i) applied when a person that uses consumer reports to set the material terms of credit cards granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies and uses the low score when determining the material terms it will offer to the consumer. Under the proposed rules, that person must disclose the low score in its notices. The example described in proposed § ____.73(d)(2)(ii) applied when a person that uses consumer reports to set the material terms of automobile loans granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. Under the proposal, that person could choose any one of these scores to include in its notices.

A consumer advocate and several industry commenters supported the Agencies' proposal. Other consumer advocates recommended that creditors disclose all the credit scores used. For the reasons described below, the final rules adopt § ____73(d) as proposed with revisions to make clear that these rules apply to use of proprietary scores that meet the definition of ''credit score'' in § ____.71(l) as well as credit scores obtained from consumer reporting agencies.

The final rules do not require creditors to disclose all the credit scores used if a creditor uses multiple credit scores in setting the material terms of credit. The final rules permit creditors at their option to disclose all the credit scores used. As noted above, although a creditor may use multiple credit scores in setting the material terms of credit, section 1100F of the Dodd-Frank Act only requires a person to disclose a single credit score that is used by the person in making the credit decision. Further credit scoring models may differ considerably in nature and range. The Agencies believe that disclosing multiple credit scores may confuse consumers and provide them little value. Consumers may not understand the extent to which credit scoring models differ, and may try to compare the different credit scores. Such comparisons may confuse consumers and lessen the value of the credit score disclosures.

Moreover, the Agencies do not believe that requiring disclosure of a particular credit score, for example, the lowest score, would be in the best interest of

[13] See 75 FR at 2742 (highlighting benefit to consumers of providing credit scores to consumers in exception notices).

consumers when multiple scores are used. The lowest score may not truly be the ''worst'' score, since credit scoring models differ, and requiring businesses to identify the ''worst'' score would add a layer of complexity without a clear benefit to consumers. The Agencies also note that the Dodd-Frank Act requires the Bureau to ''conduct a study on the nature, range, and size variations'' of different credit scoring systems, and on whether these variations disadvantage consumers. Section 1078(a). The Bureau must submit a report to Congress with the results of this study within one year after the Dodd-Frank Act enactment date. Section 1078(b). That study may shed light on the extent to which disclosure of multiple credit scores would benefit consumers, and the Bureau could revisit the Agencies' judgment in view of the results of its study.

For the reasons discussed above, the final rules do not require that creditors always disclose the lowest credit score if a creditor uses two or more credit scores in setting the material terms of credit. The Agencies believe that section 1100F of the Dodd-Frank Act does not mandate that a person disclose the lowest credit score that is used by the person in making the credit decision, if the person uses multiple credit scores in setting the material terms of credit. The person must simply disclose a credit score used.

Section ____.75 Rules of construction

Section ____.75(c) Multiple Consumers

The proposed rules amended § ____.75(c) to address circumstances where a person must provide multiple consumers, such as co-borrowers, with a risk-based pricing notice in a transaction. The proposed rules retained the rule of construction that clarifies that in a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a person must provide a risk-based pricing notice to each consumer. The proposed rules, however, amended the rules addressing the provision of a risk-based pricing notice when the consumers have the same address and when the consumers have different addresses, to account for situations where a risk-based pricing notice contains a consumer's credit score.

Proposed § ____.75(c)(1) provided that whether the consumers have the same address or not, the person must provide a separate notice to each consumer if a notice includes a credit score(s). Each separate notice that includes a credit score(s) must contain only the credit score(s) of the consumer to whom the notice is provided, and not the credit score(s) of the other consumer. If the consumers have the same address, and the notice does not include a credit score(s), a person may satisfy the requirements by providing a single notice addressed to both consumers.

The proposed rules also amended § ____.75(c)(3)(i) to provide an example illustrating the notice requirements when a person must provide a risk-based pricing notice that includes credit score information to multiple consumers. Proposed § ____.75(c)(3)(i) clarified that, in a situation where two consumers jointly apply for credit with a creditor and the credit decision is based in part on the consumers' credit scores, a separate risk-based pricing notice must be provided to each consumer whether the consumers have the same address or not. Each separate risk-based pricing notice must contain the credit score(s) of the consumer to whom the notice is provided.

Consumer advocates supported the proposed rules governing multiple consumers. Several industry commenters asked that creditors have the option to provide risk-based pricing notices to all the applicants or only to the applicant whose credit score was used in setting the material terms of credit. Some industry commenters also argued that co-applicants elect to share information with one another, and that creditors cannot prevent co-applicants from accessing each other's risk-based pricing notices.

Under section 615(h) of the FCRA, a person generally must provide a risk-based pricing notice to a consumer when the person uses a consumer report in connection with an extension of credit and, based in whole or in part on a consumer report, extends credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers. A creditor therefore must provide a risk-based pricing notice to all co-applicants, and not only to the applicant whose credit score was used in setting the material terms of credit.[14] Further, the Agencies do not believe co-applicants necessarily choose, merely by applying for credit together, to share sensitive information with one another, in particular, credit scores. The Agencies understand that creditors may not be able to prevent co-applicants from accessing each other's risk-based pricing notices. Yet the Agencies believe that creditors must provide each risk-based pricing notice to the corresponding applicant, in keeping with privacy concerns.

Appendix H of the Board's Rules and Appendix B of the Commission's Rules

Model Forms

Appendix H of the Board's rules and Appendix B of the Commission's rules contain five model forms that the Agencies prepared to facilitate compliance with the rules. Two of the model forms are for risk-based pricing notices and three of the model forms are credit score disclosure exception notices. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form. Model forms H–1 and B–1 are for use in complying with the general risk-based pricing notice requirements in § ____.72. Model forms H–2 and B–2 are for use in complying with the risk-based pricing notices given in connection with account review in § ____.72.

The proposed rules added two new forms that could be used when a person must disclose credit score information to a consumer. Model forms H–6 and B–6 set forth a risk-based pricing notice with credit score information that could be used to comply with the general risk-based pricing requirements if the additional content requirements of § ____.73(a)(1)(ix) apply. Model forms H–7 and B–7 set forth an account review risk-based pricing notice with credit score information that could be used to comply with the account review notice requirements if the additional content requirements of § ____.73(a)(2)(ix) apply.

Model forms H–1 and H–2, and B–1 and B–2, are retained. The general risk-based pricing and account review notices could continue to be used to comply with § ____.72 when the additional content requirements discussed in §§ ____.73(a)(1)(ix) and (a)(2)(ix) do not apply. As with the other model forms, use of the model forms H–6 or H–7, or B–6 or B–7, by creditors is optional. If a creditor appropriately uses Model Form H–6 or H–7, or B–6 or B–7, or modifies a form in accordance with the rules or the instructions to the appendix, that creditor will be within the rules' safe harbor and is deemed to be acting in compliance with the general risk-based pricing notice or account review notice requirement when the content provisions of §§ ____.73(a)(1)(ix) or (a)(2)(ix) apply.

[14] As noted above, a creditor that obtains a credit score and engages in risk-based pricing would need to disclose that score, unless the credit score played no role in setting the material terms of credit. If the credit score obtained for an applicant played no role in setting the material terms of credit, then the creditor does not need to include a credit score in the risk-based pricing notice provided to that applicant.

Finally, the proposal amended instructions 1. and 2. to Appendices H and B to reflect the addition of H–6 and H–7, and B–6 and B–7. The Agencies did not receive comments on the proposed changes to instructions 1. and 2. to Appendices H and B. The Agencies are adopting the changes to instructions 1. and 2. to Appendices H and B as proposed in the final rules.

In addition, as discussed in more detail above, model forms H–6 and H–7 of the Board's rules and B–6 and B–7 of the Commission's rule are also revised to add the statement: ''We used your credit score to set the terms of credit we are offering you,'' in the ''What you should know about your credit score'' box on the model forms. See *Additional Information Regarding Credit Scores, above.*

The Agencies received several comments on the proposed model forms, as discussed in more detail below. The final rules adopt model forms H–6 and H–7 of the Board's rule and B–6 and B–7 of the Commission's rule as proposed with one revision pertaining to the disclosure of contact information for the entity that provided the credit score.

Contact information for the entity that provided the credit score. An industry commenter asked that the Agencies add language to the model forms directing the consumer to the consumer reporting agency for more information about the credit score. The commenter believed that consumers may otherwise contact creditors with questions about their credit score, but that creditors are not in a position to answer those questions.

The Agencies are adding optional language to model forms H–6 and H–7 of the Board's rule and B–6 and B–7 of the Commission's rule directing the consumer to the entity (which may be a consumer reporting agency or, in the case of a proprietary score that meets the definition of a credit score, the creditor itself) that provided the credit score for any questions about the credit score, along with the entity's contact information. Creditors may use or not use the additional language without losing the safe harbor, since the language is optional. The final rules add new instruction 4. to Appendices H and B to make clear that this disclosure of the entity's contact information is optional.

Co-applicants, guarantors, and co-signers. An industry commenter recommended providing creditors with the flexibility to add language to the model forms to indicate that for co-applicants, the terms of credit may be based on either or both of the applicants' credit information. A consumer advocate similarly suggested adding language to the model forms indicating that for applications with a guarantor or co-signer, the terms of credit may be based on either or both of the applicant's, guarantor's, or co-signer's credit information. The commenters explained that such language would decrease consumer confusion, since an applicant with an excellent credit profile who receives a risk-based pricing notice may not realize that the risk-based pricing decision may have been made because of the co-applicant's, guarantor's, or co-signer's credit profile.

The Agencies believe the additional language may simply complicate the disclosures without providing a substantial benefit to consumers. An applicant with strong credit who receives a risk-based pricing notice will likely understand that the adverse decision was based on the co-applicant, guarantor, or co-signer's credit information or will contact the creditor to inquire.

Disclosure that no credit score is available. In some cases, a creditor may try to obtain a credit score for an applicant, but the applicant may have insufficient credit history for the consumer reporting agency to generate a credit score. One commenter asked that the creditor have the option to amend the model forms to provide the applicant notice that no credit score was available from a consumer reporting agency in the space available on the model forms for the credit information disclosure.

Section 1100F only applies when a creditor uses a credit score in setting the material terms of credit. The creditor cannot and is not required to disclose credit score information if an applicant has no credit score. Nothing in section 1100F of the Dodd-Frank Act prevents a creditor from providing the applicant notice that no credit score was available from a consumer reporting agency, although section 1100F does not require such notice.

Order of content. The Agencies specifically solicited comment on the ordering of the content in Model Forms H–6 and H–7, and B–6 and B–7, and whether the credit score and information relating to a credit score should be presented prior to the information on consumer reports.

Some commenters indicated that the Agencies should not change the order of the content in the model forms to present the credit score and information relating to the credit score prior to information on consumer reports. One commenter indicated that changing the order of content would impose additional compliance burdens on creditors without providing significant additional benefits for consumers.

Another commenter proposed that the credit score information should be moved up and incorporated into the information on consumer reports, instead of disclosed separately at the bottom of the notice. The final rules retain the order of the content in the model forms as proposed. The Agencies believe that it is appropriate to disclose the information related to credit reports first because the primary purpose of the risk-based pricing notices is to alert consumers that risk-based pricing occurred as a result of their consumer reports. Further, in retaining the proposed order of the content, the model forms more logically progress from more general consumer report information to more specific credit score information. In addition, given that a creditor may still provide a consumer Forms H–1 and H–2 of the Board's rules and Forms B–1 and B–2 of the Commission's rules when the creditor does not use the consumer's credit score in setting the material terms of credit, providing the credit score information after the consumer report information will promote ease of use for creditors who use Forms H–1 and H–2 of the Board's rules and Forms B–1 and B–2 of the Commission's rules for some consumers and the amended model forms for other consumers.

Order of credit report information. One commenter suggested that the credit report information in the model form should be reordered. Proposed Model Forms H–6 and H–7 of the Board's rules and Forms B–6 and B–7 of the Commission's rules disclose the credit score in the first row of the section ''Your Credit Score and Understanding Your Credit Score.'' An explanation of what credit scores are is disclosed in the second row of this section. The commenter suggested that the information would be more understandable to consumer if the explanation of what credit scores are was disclosed in the first row of this section.

The final rules retain the proposed order of the credit report information in model forms H–6 and H–7 of the Board's rules and Forms B–6 and B–7 of the Commission's rules. The Agencies believe that disclosing the credit score that is used in setting the material credit terms or reviewing the account is the primary purpose of the provisions of section 1100F of the Dodd-Frank Act. By placing the credit score that is applicable to the consumer in the first row of the section ''Your Credit Score and Understanding Your Credit Score,''

the Agencies believe that consumers are more likely to continue reading the notice to find out additional information about the credit score.

Attaching the credit score information to the current model form. One industry commenter asked the Agencies to clarify that a creditor may staple or append the credit score information using a supplemental document to a current model form on general risk-based pricing (H–1 and B–1) or an account review notice (H–2 and B–2). The Agencies note that information contained on the first page of H–1 and B–1 is the same as the information contained on the first page of H–6 and B–6. Likewise, the information contained on the first page of H–2 and B–2 is the same as the information contained on the first page of H–7 and B–7. The difference between H–1 (or B–1) and H–6 (or B–6) is the inclusion of the credit score information contained in the section ''Your Credit Score and Understanding Your Credit Score'' that is contained on the second page of H–6 and B–6. Likewise, the difference between H–2 (or B–2) and H–7 (or B–7) is the inclusion of the credit score information contained in the section ''Your Credit Score and Understanding Your Credit Score'' that is contained on the second page of H–7 and B–7. Thus, the Agencies believe that a creditor will be deemed to have used H–6 or B–6 if it staples or appends to H–1 or B–1 the credit score information contained in the section ''Your Credit Score and Understanding Your Credit Score'' that is contained on the second page of H–6 and B–6. Instruction 3. to Appendices H and B sets out the modifications that may be made to the model forms without losing the benefit of safe harbor. The combined H–1 or B–1 and attachment must comply with Instruction 3. to Appendices H and B for the creditor to retain the safe harbor for using H–6 or B–6. Likewise, a creditor will be deemed to have used H–7 or B–7 if it staples or appends to H–2 or B–2 the credit score information contained in the section ''Your Credit Score and Understanding Your Credit Score'' that is contained on the second page of H–7 and B–7, in a format substantially similar to H–7 and B–7. The combined H–2 or B–2 and attachment must comply with Instruction 3. to Appendices H and B for the creditor to retain the safe harbor for using H–7 or B–7.

Use of graphs or table format. An industry commenter requested that the Agencies clarify that creditors may use a graph or table format to provide the information in the model forms without losing the safe harbor. The commenter stressed that graphs, tables, and other visual devices may be clearer and more useful to consumers.

Although the Agencies certainly encourage simplicity, one of the key benefits of a safe harbor is uniformity. Thus, it is difficult to make a blanket statement that creditors may substitute graphs or tables without losing the safe harbor.

The Agencies reiterate the interpretation in the proposed rule. A creditor may rearrange the format of the model forms or make technical modifications to the language of the model forms, so long as the creditor does not change the substance of the disclosures. *See* Instruction 3. to Appendices H and B. The creator may not, however, make such an extensive rearrangement or modification of the language of the model forms as to materially affect the substance, clarity, comprehensibility, or meaningful sequence of the model forms. *See* Instruction 3. to Appendices H and B. Such extensive rearrangements or modification of the language of the model forms would result in loss of the safe harbor. *See* Instruction 3. to Appendices H and B. Whether a graph or table could be used without losing the safe harbor would have to be determined on a case by case basis using this standard.

Implementation Date

The Agencies noted in the proposal that the amendments in section 1100F of the Dodd-Frank Act are effective on July 21, 2011. Several industry commenters asked that the Agencies delay the implementation date by 6 months to at least 12 months. One commenter suggested that the Agencies stay the rulemaking, and let the Bureau finalize the rules. Another commenter requested that creditors receive the benefit of the safe harbor for using the proposed model forms until creditors can implement the requirements in the final rule.

Several industry commenters argued that the risk-based pricing requirements in section 1100F do not become effective until incorporated by rules, because section 1100F amends section 615(h) of the FCRA, and that section 615(h)(6) of the FCRA states that regulations are required to implement risk-based pricing requirements. Further, one industry commenter asserted that section 1088(a)(9) of the Dodd-Frank Act amends the FCRA to require the Bureau to issue regulations implementing section 1100F. This commenter argued that Congress could not have intended section 1100F of the Dodd-Frank Act to take effect on July 21, 2011 since the Bureau would not yet be operational. The commenter concluded that section 1100F of the Dodd-Frank Act is an exception to the July 21, 2011 effective date.

Section 1100F of the Dodd-Frank Act provides that the amendments in Subtitle H of Title X, which includes Section 1100F, become effective on a ''designated transfer date.'' The Secretary of the Treasury set the designated transfer date as July 21, 2011. 75 FR 57252 (Sept. 20, 2010). Thus, effective July 21, 2011, section 1100F of the Dodd-Frank Act amends section 615(h)(5) of the FCRA, which sets forth the minimum content required for risk-based pricing notices. Even if the Agencies did not modify the model forms to incorporate this additional minimum content, creditors would be required to disclose this information pursuant to the statute.

Rather than have creditors create their own notices in order to comply with section 1100F of the Dodd-Frank Act, the Agencies are exercising their existing authority to amend the model notices to reflect these changes to avoid consumer confusion, and to ensure timely, consistent, and uniform compliance with the new content provisions. Section 615(h) gives the Agencies the authority to issue rules implementing the risk-based pricing provisions, including authority to address ''the form, content, timing, and manner of delivery'' of risk-based pricing notices. The Agencies believe that adding to the requirements for the risk-based pricing notice the content required by section 1100F of the Dodd-Frank Act, and providing revised model notices is appropriate. These final rules are thus effective and compliance is mandatory beginning 30 days after the date of publication in the **Federal Register**.

III. Regulatory Analysis

A. Paperwork Reduction Act

The Agencies have reviewed the final rules and determined that they contain ''collections of information'' subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (PRA). An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The Board has reviewed and approved the final rulemaking under the authority delegated by OMB. 5 CFR part 1320, Appendix A.1. The collections of information required by this final

rulemaking are found in 12 CFR 222.73(a)(1) and (a)(2).[15]

The Commission submitted the information collection requirements contained in the proposed rulemaking to OMB for review and approval under the PRA; OMB withheld formal action on the rulemaking pending its further review of the joint final rules. The collections of information required by this final rulemaking are found in 16 CFR 640.4(a)(1) and (a)(2).

As discussed above, on March 15, 2011, the Agencies published in the **Federal Register** a joint notice of proposed rulemaking that is consistent with new content requirements in section 615(h) of the FCRA that were added by section 1100F of the Dodd-Frank Act. 76 FR 13902. The final rules require creditors to disclose credit score information to consumers when a credit score is used to set or adjust the terms of credit. Specifically, the final rules would require the following disclosures: (1) The credit score used by the person in making the credit decision; (2) the range of possible credit scores under the model used to generate the credit score; (3) all of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five; (4) the date on which the credit score was created; and (5) the name of the consumer reporting agency or other person that provided the score. In addition, the final rules require a statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history.

In the proposal, the Agencies collectively estimated that respondents potentially affected by the additional notice would take, on average, 16 hours (2 business days) to update their systems and modify model notices to comply with the proposed requirements. The Agencies recognized that the amount of time needed for any particular creditor subject to the proposed requirements may be higher or lower, but believed this average figure was a reasonable estimate.

Comments Received

The Agencies received 13 comments—two from banks, three from utilities, two from credit union trade association, two from banking trade associations, two from credit and financial services companies, one from a consumer credit trade association, and one from a law firm on behalf of an unspecified client—in response to the PRA section of the proposal. The commenters asserted that the time needed to update their systems to incorporate these requirements and coordinate with consumer reporting agencies as necessary would exceed the 16 hours estimated by the Agencies.

Burden Statement

Based on these comments, the Agencies agree that some additional time beyond 16 hours may be needed. The Agencies, therefore, have revised upward their prior burden estimate. The Agencies believe that 32 hours (4 business days) is a reasonable estimate of the average amount of time to modify existing database systems to incorporate these new requirements. Entities affected by these final rules are already familiar with the existing provisions of section 615(h) of the FCRA, which require risk-based pricing disclosures when a person uses a consumer report in setting the material terms of credit. The new requirement to require creditors to disclose credit score information to consumers when a credit score is used to set or adjust the terms of credit should not be burdensome. In addition, the Agencies have provided model notices that should significantly reduce the cost of compliance with the final rules. Moreover, the Agencies have provided exceptions to the final rules, whereby creditors may fulfill their compliance obligation by providing credit score disclosure exception notices.

Frequency of Response: On occasion.

Affected Public: Any person that is required to provide a risk-based pricing notice and uses a credit score in making the credit decision requiring a risk-based pricing notice.

Board:

For purposes of the PRA, the Board is estimating the burden for entities regulated by the Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, and the U.S. Department of Housing and Urban Development (collectively, the ''Federal financial regulatory agencies''). Such entities may include, among others, State member banks, national banks, insured nonmember banks, savings associations, Federally-chartered credit unions, and other mortgage lending institutions.

Number of Respondents: 18,173.

Estimated Time per Response: 32 hours (four business days) to update systems and modify model notices to comply with final requirements.

Total Estimated Annual Burden: 581,536 hours.

Commission:

For purposes of the PRA, the Commission is estimating the burden for entities that extend credit to consumers for personal, household, or family purposes, and are subject to administrative enforcement by the FTC pursuant to section 621(a)(1) of the FCRA (15 U.S.C. 1681s(a)(1)). These businesses include, among others, non-bank mortgage lenders, consumer lenders, utilities, state-chartered credit unions, and automobile dealers and retailers that directly extend credit to consumers for personal, non-business uses.

Number of Respondents: 199,500.[16]

Estimated Time per Response: 32 hours (4 business days) to update systems and modify model notices.

Total Estimated Annual Burden: Based on an estimated 199,500 respondents, the one-time burden, annualized for a 3 year PRA clearance, would be 2,128,000 hours [(32 × 199,500) ÷ 3]. The Commission believes that, on a continuing basis, the revision to the final rules would have a negligible effect on the annual burden. The estimated one-time labor cost for all categories of FTC covered entities under the final rule, annualized for a 3 year PRA clearance, is $91,397,600.

Total Estimated Cost Burden: Commission staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to

[15] The information collections (ICs) in this rule will be incorporated with the Board's Recordkeeping and Disclosure Requirements Associated with Regulation V (OMB No. 7100–0308). The burden estimates provided in this rule pertain only to the ICs associated with this final rulemaking. The current OMB inventory for Regulation V is available at: *http://www.reginfo.gov/public/do/PRAMain.*

[16] This estimate derives in part from an analysis of the figures obtained from the North American Industry Classification System (NAICS) Association's database of U.S. businesses. *See http://www.naics.com/search.htm.* Commission staff identified categories of entities under its jurisdiction that also directly provide credit to consumers. Those categories include retail, vehicle dealers, consumer lenders, and utilities. The estimate also includes state-chartered credit unions, which are subject to the Commission's jurisdiction. *See* 15 U.S.C. 1681s. For the latter category, Commission staff relied on estimates from the Credit Union National Association for the number of non-federal credit unions. See *http://www.ncua.gov/news/quick_facts/Facts2007.pdf.* For purposed of estimating the burden, Commission staff made the conservative assumption that all of the included entities engage in risk-based pricing and use a credit score in making the credit decision requiring a risk-based pricing notice.

calculate with precision the labor costs associated with the final rules, as they entail varying compensation levels of clerical, management, and/or technical staff among companies of different sizes. In calculating the cost figures, Commission staff assumes that managerial and/or professional technical personnel will update systems for providing risk-based pricing notices and adapt the written notices as necessary at an hourly rate of $42.95.[17] Based on the above estimates, the estimated one-time labor cost for all categories of FTC covered entities under the final rule, annualized for a 3 year PRA clearance, is $91,397,600 [((32 hours × $42.95) × 199,500) ÷ 3].

Commission staff does not anticipate that compliance with the final rules will require any new capital or other non-labor expenditures. The final rules provide a simple and concise model notice that creditors may use to comply, and, as creditors already are providing risk-based pricing notices to consumers under the FCRA, they already have the necessary resources to generate and distribute these notices. Thus, any capital or non-labor costs associated with compliance would be negligible.

B. Regulatory Flexibility Act

Board:

The Board prepared an initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) in connection with the proposed rules. The final rules cover certain banks, other depository institutions, and non-bank entities that extend credit to consumers. The Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[18] The size standard to be considered a small business is: $175 million or less in assets for banks and other depository institutions; and $7 million or less in annual revenues for the majority of non-bank entities that are likely to be subject to the final rules. Under Section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rules will not have a significant economic impact on a substantial number of small entities. The Board hereby certifies that the final rules will not have a significant economic impact on a substantial number of small business entities. The Board recognizes that the final rules will affect some small business entities; however the Board does not expect that a substantial number of small businesses will be affected or that the final rules will have a significant economic impact on them. Nonetheless, the Board has decided to publish a final regulatory flexibility analysis with the final rules and has prepared the following analysis:

1. Reasons for the Final Rules

Section 1100F of the Dodd-Frank Act amends section 615(h) of the FCRA to require persons to disclose a credit score and information relating to that credit score in risk-based pricing notices when the person uses a credit score in setting the material terms of credit. Specifically, a person must disclose, in addition to the information currently required by the January 2010 Final Rule: (1) A numerical credit score used in making the credit decision; (2) the range of possible scores under the model used; (3) the key factors that adversely affected the credit score of the consumer in the model used; (4) the date on which the credit score was created; and (5) the name of the person or entity that provided the credit score. The effective date of these amendments is July 21, 2011.

The Agencies are issuing final rules to amend the risk-based pricing rules pursuant to their existing authority under section 615(h) of the FCRA, to facilitate compliance with the new requirements under section 1100F of the Dodd-Frank Act.

2. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** above contains information on the objectives and legal basis of the final rules. The legal basis for the final rules is section 615(h) of the FCRA. The final rules are consistent with section 1100F of the Dodd-Frank Act.

3. Summary of Issues Raised by Commenters

Some industry commenters stated that the proposed rules would create substantial compliance burdens, particularly for small entities. They asked that small entities be exempt from the requirements, or that the Board delay the implementation date for small entities.

The compliance burdens identified by these commenters are not substantially different from the burdens imposed by the January 2010 Final Rule. In addition, the exemption requested by the commenters would also affect the underlying January 2010 Final Rule. Further, changes to the risk-based pricing rules and notices beyond those required by section 1100F of the Dodd-Frank Act are outside the scope of this rulemaking. Finally, the Agencies do not believe such changes to the January 2010 Final Rule are appropriate in light of the impending transfer of rulemaking authority to the Bureau.

4. Description of Small Entities to Which the Regulation Applies

The final rules apply to any person that (1) is required to provide a risk-based pricing notice to a consumer; and (2) uses a credit score in making the credit decision requiring a risk-based pricing notice. The total number of small entities likely to be affected by the final rules is unknown, because the Agencies do not have data on the number of small entities that use credit scores for risk-based pricing in connection with consumer credit. The risk-based pricing provisions of section 1100F of the Dodd-Frank Act have broad applicability to persons who use credit scores for risk-based pricing in connection with the provision of consumer credit.

Based on estimates compiled by the Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, there are approximately 9,458 depository institutions that could be considered small entities and that are potentially subject to the final rules.[19] The available data are insufficient to estimate the number of non-bank entities that would be subject to the final rules and that are small as defined by the SBA. Such entities would include non-bank mortgage lenders, automobile finance companies, automobile dealers, other non-bank finance companies, telephone companies, and utility companies.

It also is unknown how many of these small entities that meet the SBA's size standards and that are potentially subject to the final rules use credit scores for risk-based pricing in connection with the provision of consumer credit. The final rules do not impose any requirements on small entities that do not use credit scores for

[17] This cost is derived from the median hourly wage for management occupations found in the May 2009 National Occupational Employment and Wage Estimates of the Bureau of Labor Statistics, Table 1.

[18] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[19] The estimate includes 1,459 institutions regulated by the Board, 659 national banks, and 4,099 federally-chartered credit unions, as determined by the Board. The estimate also includes 2,872 institutions regulated by the FDIC and 369 thrifts regulated by the OTS. *See* 75 FR 36016, 36020 (Jun. 24, 2010).

risk-based pricing in connection with consumer credit.

5. Projected Reporting, Recordkeeping and Other Compliance Requirements

The compliance requirements of the final rules are described in detail in the **SUPPLEMENTARY INFORMATION** above.

The final rules generally require a person that is required to provide a risk-based pricing notice to a consumer and uses a credit score in making the credit decision to provide a credit score and information relating to that credit score in the notice, in addition to the information currently required by the January 2010 Final Rule.

Pursuant to the January 2010 Final Rule, a person is required to determine if it engages in risk-based pricing, based in whole or in part on consumer reports, in connection with the provision of consumer credit. If the person does engage in risk-based pricing based on consumer reports, the person generally is currently required to establish procedures for identifying those consumers to whom it must provide risk-based pricing notices.

A person that is required to provide risk-based pricing notices to certain consumers would need to analyze the regulations. The person would need to determine whether it used credit scores for risk-based pricing of the consumers to whom it must provide risk-based pricing notices. Pursuant to the final rules, a person that uses credit scores for risk-based pricing would need to provide a credit score and information relating to that credit score to those consumers to whom it must provide an risk-based pricing notice, in addition to the information currently required by the January 2010 Final Rule. The person would need to design, generate, and provide notices, including a credit score and information relating to that credit score, to the consumers to whom it must provide a risk-based pricing notice.

The Board does not expect that the costs associated with the final rules will place a significant burden on small entities.

6. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the final rules. As discussed in Part II above, the amendments to the risk-based pricing rules are consistent with section 1100F of the Dodd-Frank Act. The Agencies are issuing the final rules pursuant to their existing authority under section 615(h) of the FCRA. The amendments to the risk-based pricing rules have been designed to work in conjunction with the requirements of section 1100F of the Dodd-Frank Act, to help facilitate uniform compliance when this section becomes effective.

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

The Board solicited comments on any significant alternatives consistent with section 615(h) of the FCRA, including the provisions of section 1100F of the Dodd-Frank Act, that would minimize the impact of the final rules on small entities. As noted above, several industry commenters suggested that small entities be exempt from the proposed rules, or that the Board delay the effective date for small entities.

The Board has sought to minimize the economic impact on small entities by adopting rules that are consistent with those adopted by the Commission, and providing model notices to ease creditors' burden. As explained above, given the impending transfer of rulemaking authority to the Bureau, the Agencies do not believe it is appropriate to make changes to the January 2010 risk-based pricing rules and notices beyond those required by section 1100F of the Dodd-Frank Act. Such changes are beyond the scope of this rulemaking. In addition, Congress set the effective date for section 1100F of the Dodd-Frank Act for July 21, 2011. To facilitate compliance, the final rules are effective and compliance is mandatory beginning 30 days after the date of publication in the **Federal Register**.

Commission

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rules and a Final Regulatory Flexibility Analysis (FRFA) with the final rules, unless the Commission certifies that the rules will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605.

The Commission hereby certifies that the final rules will not have a significant economic impact on a substantial number of small business entities. The Commission recognizes that the final rules will affect some small business entities; however we do not expect that a substantial number of small businesses will be affected or that the final rules will have a significant economic impact on them.

The Commission continues to believe that a precise estimate of the number of small entities that fall under the final rules is not feasible. The Commission did not receive any comments relating to the total number of small entities that would be affected by the final rules. We did receive some comments from industry suggesting that the compliance with the final rules would be burdensome. One comment stated that publicly owned utilities, many of which qualify as small entities, will incur ''significant'' costs to comply with the final rules and requested that the Commission conduct the full FRFA analysis. The Commission considered these comments, and based on the Commission's own experience and knowledge of industry practices, the Commission continues to believe that the cost and burden to small entities of complying with the final rules are minimal. Accordingly, this document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the Commission has decided to publish a FRFA with the final rules and has prepared the following analysis:

1. Need for and Objectives of the Rules

Section 1100F of the Dodd-Frank Act amends section 615(h) of the FCRA to require persons to disclose a credit score and information relating to that credit score in risk-based pricing notices when the person uses a credit score in setting the material terms of credit. Specifically, a person must disclose, in addition to the information currently required by the January 2010 Final Rule: (1) The numerical credit score used in making the credit decision; (2) the range of possible scores under the model used; (3) the key factors that adversely affected the credit score of the consumer in the model used; (4) the date on which the credit score was created; and (5) the name of the person or entity that provided the credit score. The effective date of these amendments is July 21, 2011.

The Agencies are issuing final rules to amend the risk-based pricing rules pursuant to their existing authority under section 615(h) of the FCRA, to facilitate compliance with the new requirements under section 1100F of the Dodd-Frank Act.

2. Significant Issues Received by Public Comment

The Commission received a number of comments in response to the proposed rules. Some of the industry comments stated that the proposed rules would create substantial compliance burdens, particularly for small entities. They asked that certain small entities be exempt from the requirements, or that the Commission delay the implementation date for small entities.

The compliance burdens identified by these comments are not substantially different or distinct from the burdens imposed by the original Final Rule, which became effective January 1, 2011. Therefore the exemption requested by the comments—to be excluded from the requirement to provide risk-based pricing notices—would affect the underlying Rule. Given the impending transfer of rulemaking authority to the Bureau, however, the Agencies do not believe it is appropriate to make changes to the risk-based pricing rules and notices beyond those required by section 1100F of the Dodd-Frank Act. Such changes are beyond the scope of this rulemaking.

3. Small Entities to Which the Final Rules Will Apply

The final rules apply to any person that (1) Is required to provide a risk-based pricing notice to a consumer; and (2) uses a credit score in making the credit decision requiring a risk-based pricing notice. The total number of small entities likely to be affected by the final rules is unknown, because the Commission does not have data on the number of small entities that use credit scores for risk-based pricing in connection with consumer credit.

Moreover, the entities under the Commission's jurisdiction are so varied that there is no way to identify them in general and, therefore, no way to know how many of them qualify as small entities. Generally, the entities under the Commission's jurisdiction that also are covered by section 311 include state-chartered credit unions, non-bank mortgage lenders, automobile dealers, and utility companies. The available data, however, are not sufficient for the Commission to realistically estimate the number of small entities, as defined by the SBA, that the Commission regulates and that would be subject to the proposed rules.[20] The Commission received one comment stating that a majority of publicly owned utilities qualified as small entities and would, therefore, be affected by these final rules. The final rules do not, however, impose any requirements on small entities that do not use credit scores for risk-based pricing in connection with the provision of consumer credit.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

The compliance requirements of the final rules are described in detail in the **SUPPLEMENTARY INFORMATION** above.

The final rules generally require a creditor that is required to provide a risk-based pricing notice to a consumer, and uses a credit score in making the credit decision to provide a credit score and information relating to that credit score in the notice, in addition to the information that is currently required by the January 2010 Final Rule. Pursuant to the January 2010 Final Rule, a person is required to determine if it engages in risk-based pricing, based in whole or in part on consumer reports, in connection with the provision of consumer credit. If the person does engage in risk-based pricing based on consumer reports, the person generally is required to establish procedures for identifying those consumers to whom it must provide risk-based pricing notices.

A person that is required to provide risk-based pricing notices would need to analyze the rules. The person would need to determine whether it used credit scores for risk-based pricing of the consumers to whom it must provide risk-based pricing notices. Pursuant to the final rules, a person that uses credit scores for risk-based pricing would need to provide credit score information relating to that credit score to those consumers to whom it must provide a risk-based pricing notice, in addition to the information currently required by the January 2010 Final Rule. The person would need to design, generate, and provide notices, including a credit score and information relating to that credit score, to the consumers to whom it must provide a risk-based pricing notice.

Compliance with the final rules will involve some expenditure of time and resources, although Commission staff anticipates that the costs per entity will not be significant. Most of the costs will be incurred initially as entities update their systems for determining which of their consumers should receive risk-based pricing notices, and update notices to include a credit score and information relating to that score, as necessary, and as they train staff to comply with the rules. In calculating these costs, Commission staff assumes that for all entities managerial or professional technical personnel will handle the initial aspects of compliance with the rule, and that sales associates or administrative personnel will handle any ongoing responsibilities. To further minimize the costs associated with the final rules, the Agencies have provided a model notice to facilitate compliance. Cost estimates for compliance with the final rules are described in detail in the PRA section of this Notice.

Commission staff does not expect that the costs associated with the final rules will place a significant burden on small entities.

5. Steps Taken To Minimize Significant Economic Impact of the Rules on Small Entities

The Commission considered whether any significant alternatives, consistent with section 615(h) of the FCRA, including the provisions of section 1100F of the Dodd-Frank Act, could further minimize the final rules' impact on small entities. As noted above, some industry commenters suggested that small entities be exempt from the rules, or that the Commission delay the effective date for small entities.

As explained above, given the impending transfer of rulemaking authority to the Bureau, however, the Agencies do not believe it is appropriate to make changes to the risk-based pricing rules and notices beyond those required by section 1100F of the Dodd-Frank Act. Such changes are beyond the scope of this rulemaking. In addition, Congress set the effective date for section 1100F of the Dodd-Frank Act for July 21, 2011. The final rules are effective and compliance is mandatory beginning 30 days after the date of publication in the **Federal Register**.

The Commission has sought to minimize the economic impact on small entities by providing a model notice to ease creditor's burden and facilitate compliance. By using the model notice, creditors qualify for the safe harbor. Creditors are not required to use the model notice, however. If they provide a notice that clearly and conspicuously conveys the required information, these creditors would comply with the requirements of the rules, though they would not receive the benefit of the safe harbor. In addition, compliance with this notice requirement is format-neutral. Finally, a creditor may comply with the January 2010 Final Rule by providing consumers with a credit score disclosure notice. By providing a range of options, the Agencies have sought to help businesses of all sizes reduce the burden of complying with the final rules.

[20] Under the SBA's size standards, many creditors, including the majority of non-bank entities that are likely to be subject to the proposed regulations and are subject to the Commission's jurisdiction, are considered small if their average annual receipts do not exceed $6.5 million. Automobile dealers have a higher size standard of $26.5 million in average annual receipts for new car dealers and $21 million in average annual receipts for used car dealers. A list of the SBA's size standards for all industries can be found in the SBA's Table of Small Business Size Standards Matched to North American Industry Classification Codes, which is available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

List of Subjects

12 CFR Part 222

Banks, Banking, Consumer protection, Fair Credit Reporting Act, Holding companies, Privacy, Reporting and recordkeeping requirements, State member banks.

16 CFR Part 640

Credit, Trade practices.

16 CFR Part 698

Credit, Trade practices.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board is amending chapter II of title 12 of the Code of Federal Regulations by amending 12 CFR part 222, as follows:

PART 222—FAIR CONSUMER REPORTING (REGULATION V)

■ 1. The authority citation for part 222 continues to read as follows:

Authority: 15 U.S.C. 1681b, 1681c, 1681m and 1681s; Secs. 3, 214, and 216, Pub. L. 108–159, 117 Stat. 1952.

■ 2. Section 222.73 is amended as follows:

■ A. Paragraphs (a)(1)(vii) and (viii) are revised.

■ B. Paragraph (a)(1)(ix) is added.

■ C. Paragraphs (a)(2)(vii) and (viii) are revised.

■ D. Paragraph (a)(2)(ix) is added.

■ E. Paragraph (b)(2) is revised.

■ F. Paragraph (d) is added.

§ 222.73 Content, form, and timing of risk-based pricing notices.

(a) * * *

(1) * * *

(vii) A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;

(viii) A statement directing consumers to the Web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports; and

(ix) If a credit score of the consumer to whom a person grants, extends, or otherwise provides credit is used in setting the material terms of credit:

(A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

(B) The credit score used by the person in making the credit decision;

(C) The range of possible credit scores under the model used to generate the credit score;

(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;

(E) The date on which the credit score was created; and

(F) The name of the consumer reporting agency or other person that provided the credit score.

(2) * * *

(vii) A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;

(viii) A statement directing consumers to the Web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports; and

(ix) If a credit score of the consumer whose extension of credit is under review is used in increasing the annual percentage rate:

(A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

(B) The credit score used by the person in making the credit decision;

(C) The range of possible credit scores under the model used to generate the credit score;

(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquires made with respect to the consumer report, the number of key factors shall not exceed five;

(E) The date on which the credit score was created; and

(F) The name of the consumer reporting agency or other person that provided the credit score.

(b) * * *

(2) *Model forms.* Model forms of the risk-based pricing notice required by § 222.72(a) and (c) are contained in Appendices H–1 and H–6 of this part. Appropriate use of Model Form H–1 or H–6 is deemed to comply with the requirements of § 222.72(a) and (c). Model forms of the risk-based pricing notice required by § 222.72(d) are contained in Appendices H–2 and H–7 of this part. Appropriate use of Model Form H–2 or H–7 is deemed to comply with the requirements of § 222.72(d). Use of the model forms is optional.

* * * * *

(d) *Multiple credit scores*—(1) *In general.* When a person obtains or creates two or more credit scores and uses one of those credit scores in setting the material terms of credit, for example, by using the low, middle, high, or most recent score, the notices described in paragraphs (a)(1) and (2) of this section must include that credit score and information relating to that credit score required by paragraphs (a)(1)(ix) and (a)(2)(ix). When a person obtains or creates two or more credit scores and uses multiple credit scores in setting the material terms of credit by, for example, computing the average of all the credit scores obtained or created, the notices described in paragraphs (a)(1) and (2) of this section must include one of those credit scores and information relating to credit scores required by paragraphs (a)(1)(ix) and (a)(2)(ix). The notice may, at the person's option, include more than one credit score, along with the additional information specified in paragraphs (a)(1)(ix) and (a)(2)(ix) of this section for each credit score disclosed.

(2) *Examples.* (i) A person that uses consumer reports to set the material terms of credit cards granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies and uses the low score when determining the material terms it will offer to the consumer. That person must disclose the low score in the notices described in paragraphs (a)(1) and (2) of this section.

(ii) A person that uses consumer reports to set the material terms of automobile loans granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. That person may choose one of these scores to include in the notices described in paragraph (a)(1) and (2) of this section.

■ 3. Section 222.75 is amended by revising paragraphs (c)(1) and (c)(3)(i) to read as follows:

§ 222.75 Rules of construction.

* * * * *

(c) *Multiple consumers*—(1) *Risk-based pricing notices.* In a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a person must provide a notice to each consumer to satisfy the requirements of § 222.72(a) or (c). Whether the consumers have the same address or not, the person must provide a separate notice to each consumer if a notice includes a credit score(s). Each separate notice that includes a credit score(s) must contain only the credit score(s) of the consumer to whom the notice is provided, and not the credit score(s) of the other consumer. If the consumers have the same address, and the notice does not include a credit score(s), a person may satisfy the requirements by providing a single notice addressed to both consumers.

* * * * *

(3) *Examples.* (i) Two consumers jointly apply for credit with a creditor. The creditor obtains credit scores on both consumers. Based in part on the credit scores, the creditor grants credit to the consumers on material terms that are materially less favorable than the most favorable terms available to other consumers from the creditor. The creditor provides risk-based pricing notices to satisfy its obligations under this subpart. The creditor must provide a separate risk-based pricing notice to each consumer whether the consumers have the same address or not. Each risk-based pricing notice must contain only the credit score(s) of the consumer to whom the notice is provided.

* * * * *

■ 4. Appendix H is amended by revising paragraphs 1.,2., and 4. and adding Model Forms H–6 and H–7 to read as follows:

Appendix H to Part 222—Appendix H—Model Forms for Risk-Based Pricing and Credit Score Disclosure Exception Notices

1. This appendix contains four model forms for risk-based pricing notices and three model forms for use in connection with the credit score disclosure exceptions. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form.

2. Model form H–1 is for use in complying with the general risk-based pricing notice requirements in Sec. 222.72 if a credit score is not used in setting the material terms of credit. Model form H–2 is for risk-based pricing notices given in connection with account review if a credit score is not used in increasing the annual percentage rate. Model form H–3 is for use in connection with the credit score disclosure exception for loans secured by residential real property. Model form H–4 is for use in connection with the credit score disclosure exception for loans that are not secured by residential real property. Model form H–5 is for use in connection with the credit score disclosure exception when no credit score is available for a consumer. Model form H–6 is for use in complying with the general risk-based pricing notice requirements in Sec. 222.72 if a credit score is used in setting the material terms of credit. Model form H–7 is for risk-based pricing notices given in connection with account review if a credit score is used in increasing the annual percentage rate. All forms contained in this appendix are models; their use is optional.

* * * * *

4. Optional language in model forms H–6 and H–7 may be used to direct the consumer to the entity (which may be a consumer reporting agency or the creditor itself, for a proprietary score that meets the definition of a credit score) that provided the credit score for any questions about the credit score, along with the entity's contact information. Creditors may use or not use the additional language without losing the safe harbor, since the language is optional.

* * * * *

H–6 Model form for risk-based pricing notice with credit score information

H–7 Model form for account review risk-based pricing notice with credit score information

* * * * *

BILLING CODE 6210–01–P

BILLING CODE 6750–01–P

H-6. Model form for risk-based pricing notice with credit score information

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Price You Pay for Credit

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment]. The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

Your Credit Score and Understanding Your Credit Score

Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of credit we are offering you. Your credit score can change, depending on how your credit history changes.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**.
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert number of enquiries as a key factor, if applicable]**
[How can you get more information about your credit score?]	[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address: _____ _____ [Toll-free] Telephone number:_____]

H-7. Model form for account review risk-based pricing notice with credit score information

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Pricing of Your Account

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We have used information from your credit report[s] to review the terms of your account with us. Based on our review of your credit report[s], we have increased the annual percentage rate on your account.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] [a consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

Your Credit Score and Understanding Your Credit Score

Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of credit we are offering you. Your credit score can change, depending on how your credit history changes.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**.
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert number of enquiries as a key factor, if applicable]**
[How can you get more information about your credit score?]	[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address: _____ _____ [Toll-free] Telephone number:_____]

BILLING CODE 6210–01–C
BILLING CODE 6750–01–C

Federal Trade Commission

16 CFR Chapter I

Authority and Issuance

For the reasons discussed in the joint preamble, the Federal Trade Commission is amending chapter I, title 16, Code of Federal Regulations, as follows:

PART 640—DUTIES OF CREDITORS REGARDING RISK–BASED PRICING

■ 5. The authority citation for part 640 continues to read as follows:

Authority: Pub. L. 108–159, sec. 311; 15 U.S.C. 1681m(h).

■ 6. Section 640.4 is amended as follows:

■ A. Paragraphs (a)(1)(vii) and (viii) are revised.

■ B. Paragraph (a)(1)(ix) is added.

■ C. Paragraphs (a)(2)(vii) and (viii) are revised.

■ D. Paragraph (a)(2)(ix) is added.

■ E. Paragraph (b)(2) is revised.

■ F. Paragraph (d) is added.

§ 640.4 Content, form, and timing of risk-based pricing notices.

(a) * * *

(1) * * *

(vii) A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;

(viii) A statement directing consumers to the Web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports; and

(ix) If a credit score of the consumer to whom a person grants, extends, or otherwise provides credit is used in setting the material terms of credit:

(A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

(B) The credit score used by the person in making the credit decision;

(C) The range of possible credit scores under the model used to generate the credit score;

(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;

(E) The date on which the credit score was created; and

(F) The name of the consumer reporting agency or other person that provided the credit score.

(2) * * *

(vii) A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable)

specified by the consumer reporting agency or agencies;

(viii) A statement directing consumers to the Web sites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports; and

(ix) If a credit score of the consumer whose extension of credit is under review is used in increasing the annual percentage rate:

(A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

(B) The credit score used by the person in making the credit decision;

(C) The range of possible credit scores under the model used to generate the credit score;

(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;

(E) The date on which the credit score was created; and

(F) The name of the consumer reporting agency or other person that provided the credit score.

(b) * * *

(2) *Model forms.* Model forms of the risk-based pricing notice required by Sec. 640.3(a) and (c) are contained in Appendices B–1 and B–6 of this part. Appropriate use of Model form B–1 or B–6 is deemed to comply with the requirements of § 640.3(a) and (c). Model forms of the risk-based pricing notice required by § 640.3(d) are contained in Appendices B–2 and B–7 of this part. Appropriate use of Model form B–2 or B–7 is deemed to comply with the requirements of § 640.3(d). Use of the model forms is optional.

* * * * *

(d) *Multiple credit scores*—(1) *In general.* When a person obtains or creates two or more credit scores and uses one of those credit scores in setting the material terms of credit, for example, by using the low, middle, high, or most recent score, the notices described in paragraphs (a)(1) and (2) of this section must include that credit score and information relating to that credit score required by paragraphs (a)(1)(ix) and (a)(2)(ix). When a person obtains or creates two or more credit scores and uses multiple credit scores in setting the material terms of credit by, for example, computing the average of all the credit scores obtained or created, the notices described in paragraphs (a)(1) and (2) of this section must include one of those credit scores and information relating to credit scores required by paragraphs (a)(1)(ix) and (a)(2)(ix). The notice may, at the person's option, include more than one credit score, along with the additional information specified in paragraphs (a)(1)(ix) and (a)(2)(ix) of this section for each credit score disclosed.

(2) *Examples.* (i) A person that uses consumer reports to set the material terms of credit cards granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies and uses the low score when determining the material terms it will offer to the consumer. That person must disclose the low score in the notices described in paragraphs (a)(1) and (2) of this section.

(ii) A person that uses consumer reports to set the material terms of automobile loans granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. That person may choose one of these scores to include in the notices described in paragraph (a)(1) and (2) of this section.

■ 7. Section 640.6 is amended by revising paragraphs (c)(1) and (c)(3)(i) to read as follows:

§ 640.6 Rules of construction.

* * * * *

(c) *Multiple consumers*—(1) *Risk-based pricing notices.* In a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a person must provide a notice to each consumer to satisfy the requirements of § 640.3(a) or (c). Whether the consumers have the same address or not, the person must provide a separate notice to each consumer if a notice includes a credit score(s). Each separate notice that includes a credit score(s) must contain only the credit score(s) of the consumer to whom the notice is provided, and not the credit score(s) of the other consumer. If the consumers have the same address, and the notice does not include a credit score(s), a person may satisfy the requirements by providing a single notice addressed to both consumers.

* * * * *

(3) *Examples.* (i) Two consumers jointly apply for credit with a creditor. The creditor obtains credit scores on both consumers. Based in part on the credit scores, the creditor grants credit to the consumers on material terms that are materially less favorable than the most favorable terms available to other consumers from the creditor. The creditor provides risk-based pricing notices to satisfy its obligations under this subpart. The creditor must provide a separate risk-based pricing notice to each consumer whether the consumers have the same address or not. Each risk-based pricing notice must contain only the credit score(s) of the consumer to whom the notice is provided.

* * * * *

PART 698—MODEL FORMS AND DISCLOSURES

■ 8. The authority citation for part 698 continues to read as follows:

Authority: 15 U.S.C. 1681e, 1681g, 1681j, 1681m, 1681s, and 1681s–3; Pub. L. 108–159, sections 211(d), 214(b), and 311; 117 Stat. 1952.

■ 9. Appendix B to Part 698 is amended by revising paragraphs 1., 2., and 4, and adding Model Forms B–6 and B–7 to read as follows:

Appendix B to Part 698—Model Forms for Risk-Based Pricing and Credit Score Disclosure Exception Notices

1. This appendix contains four model forms for risk-based pricing notices and three model forms for use in connection with the credit score disclosure exceptions. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form.

2. Model form B–1 is for use in complying with the general risk-based pricing notice requirements in § 640.3 if a credit score is not used in setting the material terms of credit. Model form B–2 is for risk-based pricing notices given in connection with account review if a credit score is not used in increasing the annual percentage rate. Model form B–3 is for use in connection with the credit score disclosure exception for loans secured by residential real property. Model form B–4 is for use in connection with the credit score disclosure exception for loans that are not secured by residential real property. Model form B–5 is for use in connection with the credit score disclosure exception when no credit score is available for a consumer. Model form B–6 is for use in complying with the general risk-based pricing notice requirements in § 640.3 if a credit score is used in setting the material terms of credit. Model form B–7 is for risk-based pricing notices given in connection with account review if a credit score is used in increasing the annual percentage rate. All forms contained in this appendix are models; their use is optional.

* * * * *

4. Optional language in model forms B–6 and B–7 may be used to direct the consumer

to the entity (which may be a consumer reporting agency or the creditor itself, for a proprietary score that meets the definition of a credit score) that provided the credit score for any questions about the credit score, along with the entity's contact information. Creditors may use or not use the additional language without losing the safe harbor, since the language is optional.

* * * * *

B–6 Model form for risk-based pricing notice with credit score information

B–7 Model form for account review risk-based pricing notice with credit score information

* * * * *

BILLING CODE 6210–01–P;6750–01–P

B-6. Model form for risk-based pricing notice with credit score information

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Price You Pay for Credit

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment]. The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

Your Credit Score and Understanding Your Credit Score

Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of credit we are offering you. Your credit score can change, depending on how your credit history changes.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**.
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert number of enquiries as a key factor, if applicable]**
[How can you get more information about your credit score?]	[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address: _____ _____ [Toll-free] Telephone number:_____]

B-7. Model form for account review risk-based pricing notice with credit score information

[Name of Entity Providing the Notice]
Your Credit Report[s] and the Pricing of Your Account

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We have used information from your credit report[s] to review the terms of your account with us. Based on our review of your credit report[s], we have increased the annual percentage rate on your account.
What if there are mistakes in your credit report[s]?	You have a right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)]**, which [is/are] [a consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]**: *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

Your Credit Score and Understanding Your Credit Score

Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of credit we are offering you. Your credit score can change, depending on how your credit history changes.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number in the range]**.
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert number of enquiries as a key factor, if applicable]**
[How can you get more information about your credit score?]	[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address: _____ _____ [Toll-free] Telephone number:_____]

BILLING CODE 6210–01–C; 6750–01–C

By order of the Board of Governors of the Federal Reserve System, July 5, 2011.

Jennifer J. Johnson,

Secretary of the Board.

By the direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–17649 Filed 7–14–11; 8:45 am]

BILLING CODE 6210–01–P; 6750–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 380

Certain Orderly Liquidation Authority Provisions under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Federal Deposit Insurance Corporation (''FDIC'').

ACTION: Final rule.

SUMMARY: The FDIC is issuing a final rule (''Final Rule'') to implement certain provisions of its authority to resolve covered financial companies under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'' or the ''Act''). The Final Rule will establish a more comprehensive framework for the implementation of the FDIC's orderly liquidation authority and will provide greater transparency to the process for the orderly liquidation of a systemically important financial institution under the Dodd-Frank Act.

DATES: The effective date of the Final Rule is August 15, 2011.

FOR FURTHER INFORMATION CONTACT: R. Penfield Starke, Senior Counsel, Legal Division, (703) 562–2422; or Marc Steckel, Associate Director, Division of Insurance and Research, (202) 898–3618. For questions to the Legal Division concerning the following parts of the Final Rule contact:

Avoidable transfer provisions: Phillip E. Sloan, Counsel (703) 562–6137.

Compensation recoupment: Patricia G. Butler, Counsel (703) 516–5798.

Subpart B—Priorities of Claims: Elizabeth Falloon, Counsel (703) 562–6148.

Subpart C—Receivership Administrative Claims Procedures: Thomas Bolt, Supervisory Counsel (703) 562–2046.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act (Pub. L. 111–203, 12 U.S.C. 5301 *et seq.,* July 21, 2010) was enacted on July 21, 2010. Title II of the Act provides for the appointment of the FDIC as receiver of a nonviable financial company that poses significant risk to the financial stability of the United States (a ''covered financial company'') following the prescribed recommendation, determination, and judicial review process set forth in the Act. Title II outlines the process for the orderly liquidation of a covered financial company following the FDIC's appointment as receiver and provides for additional implementation of the orderly liquidation authority by rulemaking. The Final Rule is being promulgated pursuant to section 209 of the Act, which authorizes the FDIC, in consultation with the Financial Stability Oversight Council, to prescribe such rules and regulations as the FDIC considers necessary or appropriate to implement Title II; section 210(s)(3), which directs the FDIC to promulgate regulations to implement the requirements of the Act with respect to recoupment of compensation from senior executives or directors materially responsible for the failed condition of a covered financial company, which regulation is required to include a definition of the term ''compensation;'' section 210(a)(7)(D), with respect to the establishment of a post-insolvency interest rate; and section 210(b)(1)(C)–(D), with respect to the index for inflation applied to certain employee compensation and benefit claims. While it is not expected that the FDIC will be appointed as receiver for a covered financial company in the near future, it is important for the FDIC to have rules in place in a timely manner so that stakeholders may plan transactions going forward.

The Final Rule represents a culmination of an initial phase of rulemaking under Title II of the Dodd-Frank Act with respect to the implementation of its authority to undertake the orderly liquidation of a covered financial company. On October 19, 2010, the FDIC published in the **Federal Register** a notice of proposed rulemaking (75 FR 64173, October 19, 2010). Following consideration of comments received, that proposed rule was implemented as an Interim Final Rule (''IFR'') issued on January 25, 2011, and was codified at 12 CFR part 380, consisting of §§ 380.1–380.6 (76 FR 4207, January 25, 2011). The IFR addressed discrete topics that were critical for initial guidance for the financial industry, including the payment of similarly situated creditors, the honoring of personal service agreements, the recognition of contingent claims, the treatment of any remaining shareholder value in the case of a covered financial company that is a subsidiary of an insurance company and limitations on liens that the FDIC may take on the assets of a covered financial company that is an insurance company or a covered subsidiary of an insurance company. The FDIC requested additional general comments on the IFR as well as comments relating to specific provisions. The comment period for the IFR ended on March 28, 2011.

On March 15, 2010, the FDIC issued a notice of proposed rulemaking covering additional subjects pertinent to an orderly liquidation under Title II of the Act (76 FR 16324, March 23, 2011). The purpose of the proposed rule (the ''Proposed Rule'') that was the subject of this second notice was to continue to build on the framework initially begun with the IFR. The Proposed Rule addressed the recoupment of compensation from senior executives and directors of a covered financial company; further clarified the definition of ''financial company'' in section 201 of the Dodd-Frank Act by detailing what it means to be ''predominantly engaged in activities that are financial or incidental thereto;'' clarified the receiver's powers to avoid fraudulent and preferential transfers by a covered financial company; addressed the order of priority for the payment of claims, which included clarifying the meaning of ''administrative expenses'' and ''amounts owed to the United States,'' the priority for setoff claims, how post-insolvency interest is to be paid, the payment of claims for contracts and agreements expressly assumed by a bridge financial company; and addressed the receivership administrative claims process, including the treatment of secured claims. The notice of proposed rulemaking published in the **Federal Register** requested comments on all aspects of the Proposed Rule as well as comments relating to specific provisions. The comment period ended May 23, 2011.

II. Summary of Comments on the IFR and the Proposed Rule

The FDIC received 10 comments in response to the IFR and 21 comments in response to the Proposed Rule. Almost all of the comments were submitted by financial industry trade associations, with others submitted by insurance trade associations, clearing and settlement companies, a foundation for research and advocacy, a committee of bankruptcy attorneys, a group of law and business school faculty, and a group of law school students.

The general themes of comments that did not directly relate to the text of the IFR and Proposed Rule were wide-ranging. Commenters simultaneously urged prompt and comprehensive rulemaking to increase transparency with respect to the implementation of the orderly liquidation authority and certainty in the implementation of ongoing and future financial transactions, while counseling a deliberate pace to allow input from industry representatives and the benefit of the review of resolution plans prior to the implementation of rules governing the orderly liquidation process.

Many comments urged the greatest possible harmony with bankruptcy laws, rules and processes. These comments sought, among other things: Increased input from creditors and creditor committees, deference to bankruptcy case law, adoption of bankruptcy reporting processes, and earlier and broader judicial input and review. In this connection, comments requested greater clarity with respect to the procedures that the FDIC will follow in determining claims and valuations of collateral and assets, as well as an appeals procedure for disputed valuations of property. Commenters also urged clarification with respect to the implementation of the so-called ''Chapter 7 minimum'' payment to creditors pursuant to section 210(a)(7)(B) of the Act.[1]

Commenters from the insurance industry similarly urged the greatest possible deference to state regulators and to state laws, rules and regulations governing insurance companies. One commenter has repeatedly requested clarification that mutual insurance holding companies will be treated as insurance companies for the purposes of the Dodd-Frank Act.

Comments emphasized the importance of maximizing the going concern value of the business and assets of the covered financial company and suggested establishment of standards for the conduct of sales of assets and collateral. A specific concern was the need for clarification of the treatment of custodial assets held by non-banks in an orderly liquidation.

Another broad theme was the importance of clarifying the process and criteria for designating systemically important financial companies that may be subject to orderly liquidation. These comments generally sought to limit the scope of such a designation. In addition to general comments on this theme, one commenter took the position that money managers should never be considered systemically important. Another commenter took the same position with respect to money funds. Additional clarification also was sought with respect to the process for the designation of covered financial companies and the appointment of the receiver.

The implementation of special assessments and the clawback of preferential payments made to similarly situated creditors has been a recurring theme in comments to the IFR and the Proposed Rule. Commenters sought clarity with respect to the designation of preferential payments deemed necessary to essential operations that are exempt from the clawback under section 210(o) of the Dodd-Frank Act. Other comments urged restraint in making preferential payments and suggested additional procedural safeguards with respect to this process. Comments also urged careful consideration of any need for special assessments on the industry to avoid undue burden on well-run companies.

Commenters requested additional clarification of the implementation of the authority to create bridge financial companies, including the processes and procedures for creating and terminating bridge financial companies, the treatment of assets transferred to bridge financial companies, and the treatment of claims against bridge financial companies. One commenter suggested a rule clarifying that all qualified financial contracts will be transferred to a bridge financial company.

Commenters also expressed concern about the process for resolving an

[1] Section 210(a)(7)(B) provides that ''a creditor shall, in no event, receive less than the amount that such creditor is entitled to receive'' under a chapter 7 liquidation of such covered financial company in bankruptcy.

international financial company and stressed the need for international cooperation and coordination.

Finally, one commenter argued that the IFR and the Proposed Rule are unconstitutionally broad and usurp the legislative function constitutionally delegated to Congress.

Comments beyond the scope of the IFR and the Proposed Rule will be considered in connection with future rulemakings. Comments relating to specific provisions of the IFR and Proposed Rule are discussed below in the analysis of the relevant sections of the Final Rule.

III. The Final Rule

A. Overview

The Final Rule will divide Part 380 into subparts A, B, and C. In subpart A, § 380.1 provides definitions of general applicability in part 380. Section 380.3 provides that services rendered by employees to the covered financial company after the FDIC has been appointed as receiver, or during the period where some or all of the operations of the covered financial company are continued by a bridge financial company, will be compensated according to the terms and conditions of any applicable personal service agreements and that such payments will be treated as an administrative expense. Section 380.5 provides that if the FDIC acts as receiver for a direct or indirect subsidiary of an insurance company and that subsidiary is not an insured depository institution or an insurance company itself, the value realized from the liquidation of the subsidiary will be distributed according to the order of priorities set forth in the Dodd-Frank Act. Section 380.6 provides that the FDIC will avoid taking a lien on some or all of the assets of a covered financial company that is an insurance company or a subsidiary that is an insurance company unless it determines that taking such a lien is necessary for the orderly liquidation of the covered financial company and will not unduly impede or delay the liquidation or rehabilitation of the insurance company or the recovery by its policyholders. Section 380.7 provides that the FDIC as receiver of a covered financial company may recover from senior executives and directors who were substantially responsible for the failed condition of the covered financial company any compensation they received during the two-year period preceding the date on which the FDIC was appointed as receiver, or for an unlimited period in the case of fraud.

The Proposed Rule included § 380.8, implementing section 201(b) of the Act. Section 201(b) of the Act requires the FDIC, in consultation with the Secretary of the U.S. Treasury, to establish by regulation criteria for determining, for the purposes of Title II, if a company is predominantly engaged in activities that are financial in nature or incidental thereto as determined by the Board of Governors of the Federal Reserve System (''Board of Governors'') under section 4(k) of the Bank Holding Company Act (''BHC Act''). A company that is predominantly engaged in such activities is a ''financial company'' under Title II (unless expressly excluded by section 201(a)(11)(C) of the Act) and may be subject to the orderly liquidation provisions of the Dodd-Frank Act. On February 11, 2011, the Board of Governors published a notice of proposed rulemaking entitled ''Definitions of 'Predominantly Engaged in Financial Activities' and 'Significant' Nonbank Financial Company and Bank Holding Company'' (76 FR 7731, February 11, 2011) (''Board of Governors' NPR'').

The Board of Governors' NPR proposed criteria for determining whether a company is ''predominantly engaged in financial activities'' for purposes of determining if the company is a nonbank financial company under Title I of the Act. There are substantial similarities between the provisions in Title I of the Act, which the Board of Governors' NPR implements, and section 201(b) of the Act, which § 380.8 of the FDIC's Proposed Rule would implement. In light of those similarities, the FDIC staff coordinated with the staff of the Board of Governors, to the extent practicable, on the proposed criteria in § 380.8. The FDIC staff is continuing to coordinate with the staff of the Board of Governors on this issue and intends to finalize the criteria for determining if a company is predominantly engaged in activities that are financial in nature or incidental thereto through a separate notice in the **Federal Register.** Consequently, § 380.8 is reserved in the Final Rule.

Section 380.9 in subpart A clarifies the interpretation of provisions of the Act authorizing the FDIC as receiver of a covered financial company to avoid fraudulent or preferential transfers in a manner comparable to the relevant provisions of the Bankruptcy Code so that transferees will have the same treatment in a liquidation under the Act as they would have in a bankruptcy proceeding.

Subpart B of the Final Rule addresses the priorities for expenses of the receiver of a covered financial company and other unsecured claims against the covered financial company or the receiver. Subpart B integrates and harmonizes the various provisions of the Dodd-Frank Act that determine the nature and priority of payments. In particular, the subpart integrates the various statutory references to administrative expenses throughout the Act. It also provides additional context with respect to the definition of ''amounts owed to the United States'' to clarify that unsecured obligations advanced to provide funds for the orderly liquidation of a covered financial company or to avoid or mitigate adverse effects on the financial stability of the United States in the liquidation of the covered financial company are included among the class of claims paid at the higher statutory level accorded to amounts owed to the United States, while unsecured obligations to the United States that were incurred by the covered financial company in the ordinary course of its business prior to the appointment of the receiver will be paid at the priority of general unsecured or senior liabilities of the covered financial company. Additionally, subpart B confirms the statutory treatment of claims arising out of the loss of setoff rights at a priority ahead of other general unsecured creditors if the loss of the setoff is due to the receiver's sale or transfer of an asset, finalizes the methodology for calculating post-insolvency interest on unsecured claims and clarifies the payment of obligations of bridge financial companies and the rights of receivership creditors to any remaining value upon termination of a bridge financial company. For a more logical organizational flow, subpart B also now includes at § 380.27 the rule originally found at § 380.2 of the IFR, clarifying that the FDIC will not use its discretion to differentiate among similarly situated creditors under section 210 of the Act to give preferential treatment to certain long-term senior debt with a term longer than 360 days, and that subordinated debt and equity never will qualify for preferential treatment.

Subpart C sets forth the administrative process for the determination of claims against a covered financial company as established by relevant provisions of the Dodd-Frank Act. This process will not apply to any liabilities or obligations assumed by a bridge financial company or other entity or to any extension of credit from a Federal reserve bank or the FDIC to a covered financial company. Under the claims procedures, the receiver will publish and mail a notice

to advise creditors to file their claims by a bar date that is not less than 90 days after the date of the initial publication. The receiver will have up to 180 days to determine whether to allow or disallow the claim, subject to any extension agreed to by the claimant. The claimant will have 60 days from the earlier of any disallowance of the claim or the end of the 180-day period (or any period extended by agreement) to file a lawsuit in federal court for a judicial determination. No court has jurisdiction over any claim, however, unless the claimant has exhausted its administrative remedies through the claims process.

Subpart C also includes provisions concerning contingent claims and secured claims. With respect to claims based on a contingent obligation of a covered financial company, the receiver will estimate the value of the contingent claim at the end of either the 180-day claim determination period or any extended period agreed to by the claimant. If the claim becomes fixed before it has been estimated, it may be allowed in the fixed amount; otherwise, the estimated value will be used to calculate the claimant's pro rata distribution. With respect to secured claims, subpart C provides that property of a covered financial company that secures a claim will be valued at the time of the proposed use or disposition of the property. Secured claimants may request the consent of the receiver to obtain possession of or exercise control over their collateral. The Final Rule provides that the receiver will grant consent unless it decides to use, sell or lease the property, in which case it must provide adequate protection of the claimant's security interest in the property. This provision will not apply in a case where the receiver repudiates or disaffirms a secured contract, however.

B. Summary of Changes From the IFR and the Proposed Rule

The Final Rule contains substantive revisions and technical corrections to the provisions of the IFR and the Proposed Rule responsive to the comments received. The changes are discussed in more detail in the section-by-section analysis of the Final Rule. In summary, the substantive revisions in the Final Rule are as follows:

(1) In the Proposed Rule, § 380.2(c) provided that collateral securing claims against the covered financial company would be valued as of the date of the appointment of the receiver. This provision has been moved to § 380.50(b) of the Final Rule, which states that such property will be valued at the time of the proposed use or disposition of the property. This approach to the valuation of collateral follows the comparable provision of the Bankruptcy Code.

(2) Section 380.4 of the IFR concerning contingent claims has been moved to § 380.39 of the Final Rule. The original text of this section has been retained and new provisions have been added to provide that the receiver will estimate the value of a contingent claim no later than 180 days after the claim is filed or any extended period agreed to by the claimant.

(3) Section 380.7 addresses the recoupment of compensation from former and current senior executives and directors who are substantially responsible for the failed condition of the covered financial company. The Proposed Rule provided a standard of conduct in which, among other things, a senior executive or director would be deemed ''substantially responsible'' if he or she failed to conduct his or her responsibilities with the requisite degree of skill and care required by that position. The Final Rule clarifies the standard and provides that a senior executive or director would be deemed ''substantially responsible'' if he or she failed to conduct his or her responsibilities with the degree of skill and care an ordinarily prudent person in a like position would exercise under similar circumstances. The revision clarifies that the standard of care that will trigger section 210(s) is a negligence standard; a higher standard, such as gross negligence, is not required. The Final Rule was also revised to reflect that the FDIC as receiver may commence an action to seek recoupment and has a ''savings clause'' to preserve the rights of the FDIC as receiver to recoup compensation under all applicable laws.

(4) As discussed, the provision in § 380.8 of the Proposed Rule regarding the criteria for determining if a company is predominantly engaged in activities that are financial in nature or incidental thereto will be the subject of future rulemaking. Section 380.8 is reserved in the Final Rule.

(5) Section 380.21 of the Proposed Rule enumerated the priorities of payments to unsecured creditors. A new sentence is added in the Final Rule to provide that contractual subordination agreements will be respected, which is consistent with the practice in bankruptcy.

(6) The Proposed Rule contained a definition of ''amounts owed to the United States'' that would be entitled to the priority of claims immediately following administrative expenses, that included all amounts of any kind owed to any department, agency or instrumentality of the United States. Under the Final Rule, the definition of ''amounts owed to the United States'' in § 380.23 has been revised to clarify that the obligations entitled to the priority afforded to ''amounts owed to the United States'' include only amounts advanced to the covered financial company to promote the orderly resolution of the covered financial company or to avoid or mitigate adverse effects on the financial stability of the United States in the resolution of the covered financial company. Consistent with the goal of the Dodd-Frank Act to end any taxpayer bail-out of a nonviable financial company, unpaid unsecured federal income tax obligations also are repaid at the priority afforded to amounts owed to the United States. In response to comments and to provide clearer guidance, this section also sets forth a non-exclusive list of included types of advances, and a similar list of excluded types of advances. The level of priority afforded to amounts owed to the United States is not applicable to administrative expenses, which are dealt with in § 380.22, nor to secured obligations, which are dealt with in §§ 380.50–53 regarding secured claims.

(7) Section 380.24, which addresses the priority granted to creditors who have lost setoff rights due to the exercise of the receiver's right to sell or transfer assets free and clear of such rights, has been modified to make clear that the provisions of that section do not affect the provisions of the Dodd-Frank Act relating to rights of netting with respect to qualified financial contracts.

(8) Section 380.31 addresses the scope and applicability of the receivership administrative claims process by providing that the claims process does not apply to claims against a bridge financial company or involving its assets or liabilities, or extensions of credit from a Federal reserve bank or the FDIC to a covered financial company.

(9) Section 380.35(b)(2)(i) of the Final Rule permits the receiver to consider a claim filed after the claims bar date if the claimant did not have notice of the appointment of the receiver in time to file its claim because the claim is based on an act or omission of the receiver that occurs after the claims bar date. The Proposed Rule addressed claims that did not ''accrue'' until after the claims bar date. It was decided, however, that this was too broad because it could cover contingent claims, which are addressed in § 380.39 of the Final Rule.

(10) Sections 380.50–380.53 of the Proposed Rule have been extensively modified to more fully protect the rights of secured claimants. Property of a

covered financial company will be valued at the time of any proposed disposition or use of the property. A secured claimant may request the receiver's consent to exercise its rights against its collateral, which the receiver will grant unless it decides to use, sell or lease the collateral, in which case the receiver must provide adequate protection of the claimant's security interest in the property.

C. Section-by-Section Analysis of the Final Rule

1. Subpart A—General and Miscellaneous Provisions

Definitions. Section 380.1 of the Final Rule contains definitions of the following terms of general applicability to part 380: ''allowed claim,'' ''Board of Governors,'' ''bridge financial company,'' ''compensation,'' ''corporation,'' ''covered financial company,'' ''covered subsidiary,'' ''director,'' ''Dodd-Frank Act,'' ''employee benefit plan,'' ''insurance company,'' and ''senior executive.'' Some of these terms are terms that are defined in the Act which were not included in the IFR or the Proposed Rule, and others had been included among the substantive provisions of those rules but are now moved to § 380.1 because those terms are, or may be, used on more than one occasion throughout part 380. All of the definitions are consistent with the language of the Dodd-Frank Act. By and large, definitions that had been included in the IFR and the Proposed Rule have not been changed. The terms ''Board of Governors,'' ''Dodd-Frank Act'' and ''employee benefits plan'' were added for ease of reference and the avoidance of doubt. A clarifying change was made to the definition of ''director'' to make clear that the term includes individuals serving entities that may have a different legal form than a corporation, such as a limited liability company, in a capacity similar to a director for a corporation.

Few comments were received on these definitions. One commenter argued that the definition of ''compensation'' should use only the precise language of section 210(s)(3) of the Act, and not include any additional language. The Proposed Rule provided greater clarity to the industry by providing a non-exclusive list of the types of compensation that would be subject to recoupment that is consistent with the intent of section 210(s). Accordingly, no change to this definition is being made in the Final Rule.

Section 380.2 is reserved; the content of § 380.2 of the IFR has been moved to § 380.27 of the Final Rule and is discussed below.

Personal service agreements. Section 380.3 of the Final Rule assures that an employee who provides services to the covered financial company after appointment of the receiver, or to the bridge financial company, will be paid for such services according to the terms of any applicable personal service agreement, and such payment shall be treated as an administrative expense of the receiver. This provision does not restrict the receiver's ability to repudiate a personal services agreement, nor does it impair the ability of the receiver to negotiate different terms of employment by mutual agreement. Section 380.3 does not apply to senior executives or directors of a covered financial company and it does not limit the power to recover compensation previously paid to senior executives or directors under section 210(s) of the Dodd-Frank Act and the regulations promulgated thereunder.

Only one comment addressed the treatment of personal service agreements under § 380.3 of the IFR. That comment pointed out that the reference to covered subsidiaries in the IFR was confusing, because covered subsidiaries are, by definition, not in receivership and therefore contracts to which the subsidiary is a party cannot be repudiated by the FDIC as receiver pursuant to section 210(c) of the Act. Section 380.3 of the IFR was intended to address the possibility that an agreement entered into by a parent company may cover employees of an affiliate or subsidiary of the covered financial company. It is the intent of the Final Rule that employees be paid for work performed under a contract with a covered financial company or, if applicable, a bridge financial company, in accordance with the terms of the agreement until such time as the contract is assumed by a third party or repudiated by the FDIC as receiver. To the extent that the FDIC as receiver for the covered financial company has the power to exercise control over a subsidiary, it will ensure that employees of the subsidiary continue to be paid in accordance with the personal services agreement. However, the reference to covered subsidiaries has been deleted from § 380.3 in the Final Rule to clarify that this section does not imply that the FDIC as receiver has the power to repudiate a contract entered into by a covered subsidiary nor does it have the power to enforce the terms of such a contract except by virtue of its role as parent to such subsidiary, unless or until the FDIC is appointed as receiver of a subsidiary.

As a technical revision to the IFR, § 380.3 of the Final Rule does not include the definition of the term ''senior executive'' as the IFR had. The definition of that term has been moved into the general definitions of § 380.1. In addition, a reference is included in the last sentence of § 380.3(c) to the rule regarding recoupment of executive compensation included in this Final Rule at § 380.7.

Section 380.4 is reserved as the content of that Proposed Rule has been moved to § 380.39 and is discussed below.

Insurance company subsidiaries. The IFR provides at § 380.5 that where the FDIC acts as receiver for a direct or indirect subsidiary of an insurance company, the value realized from the liquidation of the subsidiary will be distributed according to the priorities established in the Dodd-Frank Act and will be available to the policy holders of the parent insurance company. No comments were received recommending changes to § 380.5 of the IFR. The sole revision to that section in the Final Rule is to include a reference to the regulations promulgated under section 210(b)(1) of the Act that are included in subpart B of this Final Rule.

Liens on insurance company assets. Section 380.6 of the IFR limits the ability of the FDIC to take liens on insurance company assets and assets of the insurance company's covered subsidiaries under certain circumstances after the FDIC has been appointed as receiver. As discussed in the preamble of the notice of proposed rulemaking with respect to this rule, section 204 of the Dodd-Frank Act provides that in the event that the FDIC as receiver of a covered financial company determines it to be necessary or appropriate, it may provide funding for the orderly liquidation of covered financial companies and covered subsidiaries by, among other things, making loans, acquiring debt, purchasing assets or guaranteeing them against loss, assuming or guaranteeing obligations, making payments, or entering into certain transactions. In particular, pursuant to section 204(d)(4) of the Dodd-Frank Act, the FDIC is authorized to take liens ''on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the covered financial company or any covered subsidiary to secure repayment'' of any advances made.

Commenters to the IFR questioned the reference to liens on assets of an affiliate of a covered financial company as well

as assets of a covered subsidiary. The FDIC as receiver has clear authority under section 204(d)(4) of the Act to take a lien on the ''assets of the covered financial company or any covered subsidiary to secure repayment of any transactions conducted'' under that section. While section 203(e) of the Act contemplates that the FDIC could be appointed as receiver for an affiliate of an insurance company that is not itself a subsidiary, it is clear that upon appointment, the affiliate would become a covered financial company, rendering the reference to ''affiliates'' in § 380.6 superfluous. The Final Rule has been revised accordingly to eliminate the reference to ''affiliates'' of the covered financial company and to make clear that the rule applies only to covered subsidiaries of insurance companies.

Recoupment of Compensation. Section 380.7 of the Final Rule implements section 210(s) of the Dodd-Frank Act, which authorizes the FDIC as receiver to recoup compensation when a current or former senior executive or director is ''substantially responsible'' for the failed condition of a covered financial company. The Final Rule provides, in pertinent part, that a senior executive or director would be deemed ''substantially responsible'' if he or she failed to conduct his or her responsibilities with the degree of skill and care required by that position. Comments received on § 380.7 of the Proposed Rule sought clarification or made recommendations regarding this standard. Some comments took the position that substantial responsibility should be based on state law or established legal standards. One commenter took the position that substantial responsibility should exist based solely on the failure of the covered financial company with no inquiry into conduct. In response to the comments, the Final Rule clarifies the standard and provides that a senior executive or director would be deemed ''substantially responsible'' if he or she failed to conduct his or her responsibilities with the degree of skill and care an ordinarily prudent person in a like position would exercise under similar circumstances. The revision clarifies that the standard of care that will trigger section 210(s) is a negligence standard; a higher standard, such as gross negligence, is not required. In the event that a covered financial company is liquidated under Title II, the FDIC as receiver will undertake an analysis of whether the individual has breached his or her duty of care, including an assessment of whether the individual exercised his or her business judgment. The burden of proof, however, will be on the former senior executive or director to establish that he or she exercised his or her business judgment. State ''business judgment rules'' and ''insulating statutes'' will not shift the burden of proof to the FDIC or increase the standard of care under which the FDIC as receiver may recoup compensation.

The Final Rule provides that, in certain limited circumstances, a senior executive or director would be presumed to be substantially responsible for the failed condition of the covered financial company. Some commenters objected to the use of the rebuttable presumption of substantial responsibility that was based on the position or the duties of the current or former senior executive or director. Those commenters argued that a presumption based solely on an individual's position in a company would be a disincentive for any individual to take that position and would be detrimental to the financial industry. Other commenters objected to the presumption of substantial responsibility that was based on an individual's removal from his or her position under section 206 of the Act. One commenter argued that the presumption exception for ''white knights'' was too narrow and would serve as a disincentive for individuals to take positions with financially impaired companies. The statutory language of the Dodd-Frank Act provides for the recoupment of compensation from current or former senior executives or directors of covered financial companies when they have not performed their duties and responsibilities. The use of rebuttable presumptions for those individuals under the limited circumstances described in the Proposed Rule is aligned with the intent shown in the statutory language; thus, the presumptions remain unchanged in the Final Rule.

Some comments requested clarification of the procedure that would be used for pursuing recoupment of compensation. The FDIC anticipates that it will seek recoupment of compensation through the court system using a procedure similar to the procedure that it currently uses when it seeks recovery from individuals whose negligent actions have caused losses to failed financial institutions. In those situations, the FDIC as receiver undertakes an investigation to determine if there are meritorious and cost-effective claims and, if so, staff requests authority to sue from the FDIC Board of Directors or the appropriate delegated authority. Similarly, under section 210(s) of the Act, the FDIC anticipates that it will investigate whether the statutory criteria for compensation recoupment are met and, if so, staff will request authorization of a suit for recoupment. The Final Rule reflects this procedure by indicating that the FDIC as receiver may file an action to seek recoupment of compensation.

The Final Rule has a ''savings clause'' to preserve the rights of the FDIC as receiver to recoup compensation under all applicable laws.

Treatment of fraudulent and preferential transfers. Section 380.9 of the Proposed Rule addressed the powers granted to the FDIC as receiver in section 210(a)(11) of the Dodd-Frank Act to avoid certain fraudulent and preferential transfers and sought to harmonize the application of these powers with the analogous provisions of the Bankruptcy Code so that the transferees of assets will have the same treatment in a liquidation under Title II as they would in a bankruptcy proceeding.

One commenter noted that § 380.9(b)(2) of the Proposed Rule provided that the term ''fixture'' shall be interpreted in accordance with federal bankruptcy law, and stated that a bankruptcy court would look to applicable non-insolvency law when determining what constitutes a fixture. The commenter pointed out that typically under non-insolvency law, the law of the state in which a fixture is located would govern the determination of what constitutes a fixture, and suggested that the FDIC need not apply a federal rule to determine what a fixture is for preference purposes. By providing in the Proposed Rule that the term ''fixture'' is to be interpreted in accordance with federal bankruptcy law, it was intended that the term be interpreted in the same manner as under federal bankruptcy law. Thus, to the extent that bankruptcy courts continue to define ''fixture'' by reference to applicable non-insolvency law, including state law, the same analysis would be applied to define ''fixture'' under § 380.9. Therefore, the provision does not create a new federal rule to define ''fixture,'' and no clarifying change to the Final Rule is necessary.

2. Subpart B—Priorities

Subpart B addresses the priority for expenses and unsecured claims established under section 210(b) of the Act. It organizes and clarifies provisions throughout the Act dealing with the relative priorities of various creditors with unsecured claims against a failed financial company.

Priorities. Section 380.21 lists each of the eleven priority classes of claims established under the Dodd-Frank Act in the order of its relative priority. In addition to the specified priorities listed in section 210(b) of the Act, the Final Rule integrates additional levels of priority established under section 210(b)(2) (certain post-receivership debt); section 210(a)(13) (claims for loss of setoff rights); and section 210(a)(7)(D) (post-insolvency interest).

Section 380.21(b) conforms the method of adjusting certain payments for inflation to the similar provisions of the Bankruptcy Code. Section 380.21(c) provides that each class will be paid in full before payment of the next priority, and that if funds are insufficient to pay any class of creditors, the funds will be allocated among creditors in that class, *pro rata.*

Section 380.21 of the Final Rule contains four changes from the language of the Proposed Rule. The introduction to paragraph (a) now uses the defined term ''allowed claims'' for consistency and to clarify that this rule applies only to unsecured claims, including the unsecured portion of under-secured claims. This change is in response to the request of several commenters that this important point be made even clearer and more express in recognition of the mandate of section 210(b)(5) that section 210 of the Act shall not affect a secured claim except to the extent that the security is insufficient to satisfy the claim. Also, § 380.21(a)(3) was modified to clarify that the class of claims for ''amounts owed to the United States'' does not include obligations that meet the definition of administrative expenses in § 380.22. A corresponding clarification has been made to § 380.23. A technical change to § 380.21(a)(4) and (5) substitutes the word ''within'' for the phrase ''not later than'' to make clear that the relevant employees' claims must arise during the time period within 180 days before the date of the appointment of the receiver.

A comment also requested clarification of the impact of contractual agreements on priorities. The last sentence of § 380.21(c) is added in response to that comment, to make clear that enforceable contractual subordination agreements will be respected. This is consistent with section 510(a) of the Bankruptcy Code, which provides that subordination agreements enforceable under applicable non-bankruptcy law will be respected by the trustee in bankruptcy.

Administrative expenses of the receiver. Section 380.22 of the Proposed Rule expanded and clarified the statutory definition of the term ''administrative expenses of the receiver'' by consolidating various statutory references to administrative expenses in a single section and by making clear that administrative expenses of the receiver can include costs and expenses incurred by the FDIC prior to the appointment as receiver, as well as post-appointment expenses if the expenses are necessary and appropriate to facilitate the smooth and orderly liquidation of the covered financial company.[2]

The changes to § 380.22 of the Proposed Rule are intended solely to provide clarity. A commenter questioned how expenses of the receiver might pre-date the appointment of the receiver. The change to ''pre- and post-failure costs and expenses of the FDIC in connection with its role as receiver'' clarifies that costs incurred in anticipation of and preparation for the role as receiver are administrative expenses of the receiver. Similarly, comments revealed some confusion about debt accorded super-priority status ahead of administrative expenses under § 380.21(a)(1) of the Proposed Rule. The language of the Final Rule more closely tracks the statutory language with respect to debt that qualifies for super-priority status.

Amounts owed to the United States. Section 380.23 of the Proposed Rule established a definition of ''amounts owed to the United States'' that are entitled to be paid at the level of priority immediately following administrative expenses. It defined that class of claims to include amounts advanced by the U.S. Treasury, or by any other department, instrumentality or agency of the United States, whether such sums are advanced before or after the appointment of the receiver. It expressly included advances by the FDIC for funding of the orderly liquidation of the covered financial company pursuant to section 204(d)(4) of the Act but also included other sums advanced by departments, agencies and instrumentalities of the United States such as payments on FDIC corporate guarantees, including the Temporary Liquidity Guarantee Program and unsecured claims for net realized losses by a federal reserve bank in connection with loans made under section 13(3) of the Federal Reserve Act, 12 U.S.C. 343, and unsecured accrued and unpaid taxes owed to the United States.

Several comments requested clarification with respect to the relationship between pre- and post-receivership administrative expenses incurred by the FDIC that were described in § 380.22 of the Proposed Rule and are included in the administrative expense class of claims under § 380.21(a)(2). For the sake of clarity, § 380.23 of the Final Rule states that amounts owed to the United States do not include any amounts included in the administrative expense classes of claims at § 380.21(a)(1) and (a)(2).

All of the comments specifically addressing § 380.23 of the Proposed Rule reflected concerns that expressly including amounts owed to all ''departments, agencies and instrumentalities'' of the United States in the regulatory definition of ''amounts owed to the United States'' was vague and potentially overbroad. Clarification was requested with respect to specific examples of amounts that might be deemed to be included in the broad definition under the Proposed Rule, such as amounts owed to the Pension Benefit Guaranty Corporation arising out of underfunded pension obligations, amounts owed to the Environmental Protection Agency arising out of superfund cleanup obligations, and fees payable to the Securities and Exchange Commission or other regulatory agencies, to name a few. In the Final Rule, the phrase ''departments, agencies and instrumentalities'' of the United States found in the Proposed Rule is omitted in favor of the simpler statutory reference to the ''United States.'' This change is not intended to limit the definition strictly to amounts owed to the U.S. Treasury and the Final Rule expressly provides in § 380.23(a) that amounts owed to agencies or instrumentalities other than the U.S. Treasury for certain purposes will be included as ''amounts owed to the United States.''

Section 380.23(a) adds language to make clear that the priority for amounts owed to the United States relates to amounts advanced in connection with the purposes and mandates of Title II of the Act, namely, to conduct the orderly resolution of a covered financial company, to avoid or mitigate adverse consequences to the financial stability of the United States arising out of the failure of the covered financial company and to ensure that outstanding tax obligations to the U.S. Treasury are repaid to protect the taxpayers. These include obligations such as advances under the Temporary Liquidity Guaranty Program that was created by

[2] Claims for certain expenses incurred in connection with the liquidation of a covered broker or dealer that qualify for administrative expense priority are not addressed in the Proposed or Final Rule because matters relating to the liquidation of a covered broker-dealer under section 205(f) of the Act are required to be addressed in a separate rule being prepared jointly with the U.S. Securities and Exchange Commission.

the FDIC to address a systemic liquidity crisis, repayment of the amount of any debt owed to a Federal reserve bank related to loans made through programs or facilities authorized under the Federal Reserve Act, 12 U.S.C. 221 *et seq.,* as well as payment of unpaid unsecured federal income tax obligations of the covered financial company.

Although the language of the Dodd-Frank Act does not elaborate on the intent of the phrase ''amounts owed to the United States,'' it is clear that it is not intended to include all amounts owed to the United States of any kind or nature. The fact that the Act specifically mentions the inclusion of some obligations,[3] suggests that others must be excluded, and that it is not the intent of the Act to elevate liabilities for unsecured amounts due to government departments, agencies or instrumentalities arising in the covered financial company's ordinary course of business over other general or senior liabilities. Thus, the Final Rule includes a new paragraph (b) to establish the general rule that obligations incurred prior to the appointment of the receiver that are unrelated to the particular mandates of the Dodd-Frank Act will not be included among the class of claims described in § 380.21(a)(3). The Final Rule expressly provides that unsecured obligations such as any unsecured portion of a Federal Home Loan Bank advance or payments due under guarantees from government sponsored entities such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation are not included among ''amounts owed to the United States.'' These exclusions were identified in the preamble to the Proposed Rule. Similarly, the Final Rule provides that unsecured unpaid filing or registration fees due to any federal agency would not be classified as ''amounts owed to the United States'' because they are unrelated to the mandates of the Dodd-Frank Act. These unsecured amounts would be included among the priority class otherwise applicable to such claims under § 380.21(a)(7).

New paragraph (a)(5) in § 380.23 was added to clarify that government departments, agencies, and instrumentalities may, for avoidance of doubt, expressly designate amounts advanced as amounts intended to be included as amounts owed to the United States for the purpose of the priorities established in § 380.21. Such designation would be used in the case of advances to a financial company to avoid or mitigate adverse effects on the financial stability of the United States or to liquidate a covered financial company.[4] Any such designation would be in writing by the appropriate department, agency or instrumentality in a form acceptable to the FDIC.

In addition, some commenters requested clarification that the Final Rule does not affect the rights of secured creditors. No change to the rule is necessary to clarify that point. The priorities established under section 210(b) of the Act relate only to unsecured claims and do not affect the rights of secured creditors, which are addressed in §§ 380.50–380.53 of the Final Rule. To underscore this point, the reference to ''secured or unsecured'' amounts advanced under section 204(d) of the Act in § 380.23(a)(1) of the Proposed Rule has been deleted in the Final Rule. Although the text of section 204(d) of the Act refers both to the priorities under section 210(b) and to taking liens to secure amounts advanced, it is a clearer, more consistent approach to treat all secured claims under the rules applicable to such claims and not under the priorities applicable to unsecured claims.

Finally, some commenters expressed concern that the definition of ''amounts owed to the United States'' may have the effect of increasing the amount of risk-based assessments that may be charged by the FDIC under section 210(o)(1)(B) of the Dodd-Frank Act. That provision authorizes and directs the FDIC to impose risk-based assessments on eligible financial companies ''if such assessments are necessary to pay in full the obligations issued by the [FDIC] to the Secretary [of the U.S. Treasury] under [Title II] within 60 months of the date of issuance of such obligations.'' The priority of payments applied by the receiver in the liquidation of the assets of the covered financial company is independent of the assessments imposed by FDIC in its corporate capacity in exercising its authority under section 210(o) of the Act. While only the obligations that are expressly included in section 210(a)(1)(B) of the Act are entitled to the benefit of the assessments, this does not constitute a preferential payment to a similarly situated creditor because it is imposed pursuant to a statutory requirement and cannot be subject to clawback under section 210(o)(1)(D)(i).

Paragraph (c) of § 380.23 is unchanged. It acknowledges that the United States may subordinate its right to repayment behind any class of creditors by express written consent, provided that in any event all amounts due to the United States must be paid prior to any payment to equity holders of the covered financial company. Absent such express written subordination, all amounts owed to the United States will be paid at the priority under § 380.21(a)(3), regardless of whether they are characterized as debt or equity on the books of the covered financial company.

Claims for loss of setoff rights. Section 380.24 of the Final Rule addresses the claims of creditors who have lost a right of setoff due to the exercise of the receiver's right to sell or transfer assets of the covered financial company free and clear in a manner consistent with the express provisions of the Act. Any claim for the loss of setoff rights is given a priority above other general unsecured creditors but below administrative claims, amounts owed to the United States and certain employee-related claims.

Several comments to § 380.24 pointed out that the treatment of setoff under the Proposed Rule is different from the practice in bankruptcy and took issue with the statement in the preamble to the Proposed Rule that treatment of setoff claims under the Dodd-Frank Act ''should normally provide value to setoff claimants equivalent to the value of setoff under the Bankruptcy Code.'' These commenters agreed with the statement in the preamble that in bankruptcy setoff rights are functionally equivalent to a secured claim and pointed out that this is a significantly higher place in the preference scheme than the super-priority general unsecured creditor status that claims arising out of loss of setoff rights are granted under the Dodd-Frank Act. In context, the quoted sentence points out that it is anticipated that in most cases there will be sufficient funds to pay creditors with claims arising out of loss of setoff rights in a Title II orderly liquidation, Dodd-Frank orderly resolution, not that the outcome is certain to be identical under either priority scheme. The Dodd-Frank Act provides that a creditor who has lost a right of setoff due to the exercise of the receiver's right to sell or transfer assets of the covered financial company free

[3] For example, section 204(d)(4) (funding for orderly liquidation), section 210(c)(6)(C) (certain advances from the SIPC Fund), and section 1101(a)(6)(E) (net realized losses on certain loans by a Federal reserve bank) all are specifically designated as receiving the priority for ''amounts owed to the United States.''

[4] Although not expressly stated in this rule, amounts paid to customers of a covered broker dealer or to the Securities Investors Protection Corporation (SIPC) pursuant to section 205(f) are entitled to the same priority as amounts owed to the United States pursuant to section 210(b)(6). These issues will be addressed in a joint rulemaking with the SEC as required by section 205(h) of the Act.

and clear of the claims of third parties pursuant to section 210(a)(12)(F) is entitled to a claim senior to all unsecured liabilities other than those described in section 210(b)(A)–(D) of the Act (i.e., immediately behind the class of general unsecured creditors and senior liabilities described in § 380.21(a)(7)). The language of the Proposed Rule respected this clear expression of intent by the legislature, and no change to this language is made in the Final Rule with respect to the priority accorded to claims arising from loss of setoff rights.

Commenters also sought clarification that § 380.24 does not affect the contractual rights of netting with respect to qualified financial contracts that are protected under the Dodd-Frank Act. Section 210(c)(8) of the Act provides that qualified financial contracts are exempt from provisions of the Act limiting any right to offset in certain circumstances. Accordingly, a new paragraph (c) was added to § 380.24 in the Final Rule to clarify that the provisions of this section are not intended to disturb such rights with respect to qualified financial contracts. If a qualified financial contract is subject to a master agreement, such master agreement will be treated as a single agreement as provided in section 210(c)(8)(D)(viii).

Post-insolvency interest. Section 380.25 of the Final Rule establishes a post-insolvency interest rate, as required by section 210(a)(7)(D) of the Dodd-Frank Act. That rate is based upon the coupon equivalent yield of the average discount rate set on the three-month U.S. Treasury bill, which is consistent with the post-insolvency interest rate applied to claims under section 11(d)(10)(C) of the Federal Deposit Insurance Act (the ''FDI Act''), 12 U.S.C. 1821(d)(10)(C). (*See* 12 CFR 360.7.)

Six comments pertaining to § 380.25 of the Proposed Rule were received. Commenters variously suggested the use of the federal rate as is the practice in some bankruptcy cases, or the contract rate where one is specified, or any specified contract rate other than a default rate. Two commenters agreed that the use of a post-insolvency interest rate based on the average discount rate for the three-month Treasury bill is appropriate, at least where no contract rate is provided. One commenter pointed out that given the fact that post-insolvency interest is paid only after all creditors have been fully paid, the provision will rarely, as practical matter, materially affect creditors. As was recognized by some commenters, there is no express rule for treatment of post-insolvency interest under the Bankruptcy Code and applicable case law is not uniform. The Final Rule adopts the language of the Proposed Rule with respect to the method of calculating the post-insolvency interest rate for unsecured claims without change, in favor of the consistency and ease of administration of the rate that has been applied by the FDIC with respect to claims under the FDI Act.

Bridge financial companies. Section 380.26 was included in the Proposed Rule during the early stages of the rulemaking process because of the importance of addressing two issues that were the subject of several requests for clarification. First, it made clear that any contract or agreement purchased and assumed or entered into de novo by the bridge financial company becomes the obligation of the bridge financial company and that the bridge financial company shall enforce and observe the terms of any such contract or agreement. Secondly, it stated that any remaining assets or proceeds of the bridge financial company after payment of all administrative expenses and other claims shall be distributed to the receiver of the related covered financial company for the benefit of the creditors of that covered financial company.

Commenters have continued to call for additional clarifications with respect to the treatment of bridge financial companies and their assets and liabilities. A more expansive treatment of this topic is beyond the scope of the Final Rule and will be the topic of a future rulemaking. Accordingly, other than two minor changes to the language intended simply to clarify the text, the Final Rule is unchanged from the Proposed Rule. The two minor changes are the use of the indefinite ''any'' in lieu of the definite article ''a'' before ''contract or agreement giving rise to such asset or liability'' in paragraph (a), and the use of the defined term ''allowed claim'' in place of the word ''claim'' in the same paragraph. No substantive changes to the Final Rule are intended by these corrections.

Similarly situated creditors. Section 380.27 contains the provision found at § 380.2 of the IFR addressing the treatment of similarly situated creditors. This provision makes clear that certain categories of creditors, including creditors holding unsecured debt with a term of more than 360 days, will not be given additional payments compared to other general trade creditors or any general or senior liability of the covered financial company nor will exceptions be made for favorable treatment of holders of subordinated debt, shareholders or other equity holders. Although some commenters have supported this rule, others have consistently objected to it through two rounds of comments. These comments reiterated the objections to this rule that were considered in implementing the IFR. Accordingly, the Final Rule contains no change to the language of the IFR now set forth in § 380.27(a) and (b). These provisions are clearly consistent with the mandate of the Dodd-Frank Act expressed in sections 204(a) and 210(a)(1)(M) that the orderly resolution of covered financial companies is to be undertaken in a manner that ensures that the creditors and shareholders of a covered financial company will bear the losses of the covered financial company.

Paragraph (c) of § 380.2 of the IFR has been deleted in its entirety from § 380.27 of the Final Rule, and is moved to § 380.50(b), as the subject of the treatment of secured creditors is addressed in §§ 380.50–380.53.

Although not impacting the text of the Final Rule, one new topic was addressed in a joint comment letter from two trade associations representing the banking and securities industries. This letter suggested an alternative approach for the orderly resolution of systemically important financial institutions that would provide for the exchange of certain subordinated debt for equity. The joint working paper prepared by these trade associations describes a recapitalization plan that the FDIC could implement following its appointment as receiver of a covered financial company via the transfer of the viable assets and businesses of a failed institution into a bridge financial company established after failure and a conversion of certain creditors of the failed institution into equity holders in the bridge financial company. In the view of the commenters, this approach would neither be considered a traditional ''bail-in'' recapitalization nor contingent capital, nor would it require a taxpayer-funded bailout. The commenters suggested that this approach might also facilitate the discussion of the resolution of a failed cross-border financial institution. No change to the Final Rule is made in connection with this proposal, as any exchange of debt for equity in the bridge financial company would be accomplished pro rata and in accordance with the priorities established under § 380.21. Furthermore, although this approach may prove to be useful in conducting an orderly liquidation of a covered financial company in certain circumstances, comment on this particular approach is outside the scope of the Final Rule. This letter may,

however, be seen as an example of the value generated by constructive dialogue between the private financial markets and the federal government on topics such as this one.

3. Subpart C—Receivership Administrative Claims Process

Subpart C of the Final Rule adopts and interprets where necessary the administrative claims determination process provided for in the Act.

Receivership administrative claims process. Section 380.30 of the Final Rule reflects the authorization under the Dodd-Frank Act that the FDIC as receiver of the covered financial company shall determine all claims in accordance with the statutory procedures set forth in sections 210(a)(2)–(5) of the Act and with the regulations promulgated by the FDIC.

Scope & Applicability. Section 380.31 of the Final Rule addresses the scope of the claims process. It clarifies that the claims process will not apply to a bridge financial company or to any extension of credit from a Federal reserve bank or the FDIC to a covered financial company. Commenters sought clarification that the claims process does not affect the contractual rights of netting and setoff with respect to qualified financial contracts that are protected under the Dodd-Frank Act. This concern is addressed in § 380.51(g) of the Final Rule, which excepts qualified financial contracts from the requirement to seek the consent of the receiver before exercising contractual rights against property of the covered financial company. If a party to a qualified financial contract has an unsecured claim after terminating the contract and liquidating any collateral, such claim would be subject to the claims process.

The definitions in § 380.31 of the Proposed Rule have been moved into the general definitions of § 380.1 of the Final Rule.

Claims bar date. Section 380.32 of the Final Rule follows section 210(a)(2)(B) of the Dodd-Frank Act authorizing the receiver to establish a ''claims bar date'' by which creditors of the covered financial company are to file their claims with the receiver. The claims bar date must be identified in both the published notices and the mailed notices required by the statutory procedures. Section 380.32 clarifies that the claims bar date is calculated from the date of the first published notice to creditors, not from the date of appointment of the receiver.

Notice requirements. Section 380.33 of the Final Rule follows the statutory procedures for notice to creditors of the covered financial company. As required by the statute, upon its appointment as receiver of a covered financial company, the FDIC as receiver will promptly publish a notice; subsequently, the receiver will publish a second and third notice one month and two months, respectively, after the first notice is published. The notices must inform creditors to present their claims to the receiver, together with proof, by no later than the claims bar date. The Final Rule provides that the notices shall be published in one or more newspapers of general circulation in the market where the covered financial company had its principal place of business. In recognition of the public's growing reliance on communication using the Internet as well as the prevalence of online commerce, the FDIC may also post the notice on its public website. Several comments suggested that notices be published in certain specific financial news media both domestically and abroad. The Final Rule does not adopt this suggestion; the FDIC will provide notices in specific media that will be appropriate under the particular circumstances.

Discovered claimants. In addition to publishing the notice described in § 380.33(a), the receiver also must mail a notice that is similar to the publication notice to each creditor appearing on the books and records of the covered financial company. The mailed notice will be sent at the same time as the first publication notice to the last address of the creditor appearing on the books or in any claim filed by a claimant. The Final Rule supplements this procedure by providing that after sending the initial mailed notice, the receiver may communicate by electronic media (such as email) with any claimant who agrees to such means of communication. This provision will facilitate the filing of claims electronically if a claimant chooses to do so.

Section 380.33(d) of the Final Rule clarifies the treatment of creditors that are discovered after the initial publication and mailing has taken place. The FDIC as receiver will mail a notice similar to the publication notice to any claimant not appearing on the books and records of the covered financial company no later than 30 days after the date that the name and address of such claimant is discovered. If the name and address of the claimant is discovered prior to the claims bar date, such claimant will be required to file the claim by the claims bar date. There may be instances when notice to the discovered claimant is sent too close before the claims bar date to reasonably permit timely filing, however. In such a case, the claimant may invoke the statutory exception for late-filed claims set forth in section 210(a)(3)(C)(ii) of the Dodd-Frank Act in order to have its claim considered by the receiver.

Because section 210(a)(2)(C) of the Dodd-Frank Act does not distinguish between claimants discovered before and claimants discovered after the claims bar date, the statute literally would require the receiver to mail a notice of the claims bar date to a claimant discovered after such date. However, such a discovered claimant cannot file a claim timely if the claims bar date has already passed. Therefore, the Final Rule provides that a claimant discovered after the claims bar date will be given 90 days to file a claim. This time frame is consistent with the time frame set forth in section 210(a)(2)(B) of the Dodd-Frank Act, which provides for the claims bar date to be not less than 90 days after the first publication of the notice to creditors. The receiver will disallow any claim filed by such a ''late-discovered'' claimant after the 90-day period, however.

Some comments suggested that claimants discovered within 30 days before the claims bar date should not be required to submit a claim by the claims bar date but given additional time to file a claim. This suggestion is unnecessary because the Dodd-Frank Act's late-filed claim exception (see section 210(a)(3)(C)(ii)) encompasses claimants who are notified before the claims bar date but do not have sufficient time to prepare and file a claim before such date. In such a case, the claimant must show that it did not have notice of the appointment of the receiver in time to file by the claims bar date.

Procedures for filing claims. Section 380.34 of the Final Rule provides guidance to potential claimants regarding certain aspects of filing a claim. The FDIC as receiver has determined to provide creditors with instructions on how to file a claim in several different formats. These will include providing FDIC contact information in the publication notice, providing a proof of claim form and filing instructions with the mailed notice, and posting a link to the FDIC's non-deposit claims processing web site. A claim will be deemed filed with the receiver as of the date of postmark if the claim is mailed or as of the date of successful transmission if the claim is submitted by facsimile or electronically.

This section also confirms that each individual claimant must submit its own claim and that no single party may assert a claim on behalf of a class of litigants. On the other hand, a trustee named or appointed in connection with

a structured financial transaction or securitization is permitted to file a claim on behalf of the investors as a group because in such a case the trustee legally owns the claim. The suggestion that an agent bank in a syndicated loan arrangement be permitted to file a claim on behalf of the lender group was rejected because each lender in a syndication arrangement has contractual privity with the borrower and therefore should be required to file a claim on its own behalf. The Final Rule follows the statutory provision that the filing of a claim constitutes the commencement of an action for purposes of any applicable statute of limitations and does not prejudice a claimant's right to continue any legal action filed prior to the date of the receiver's appointment. The Final Rule also clarifies that the claimant cannot continue its legal action until after the receiver determines the claim.

Determination of claims. Section 380.35 of the Final Rule follows the requirements of section 210(a)(3) of the Dodd-Frank Act authorizing the receiver to allow and disallow claims. The FDIC has added a clarifying clause in the Final Rule to be consistent with section 210(a)(3)(D)(iii) of the Act, which excludes any extension of credit from a Federal reserve bank or the FDIC to a covered financial company.

Late-filed claim exception. Section 210(a)(3)(C) of the Dodd-Frank Act instructs the receiver to disallow any claim that is filed after the claims bar date, subject to an exception for certain late-filed claims. Under this exception, a claim filed after the claims bar date may be considered by the receiver if (i) the claimant did not have notice of the appointment of the receiver in time to file by the claims bar date and (ii) the claim is filed in time to permit payment by the receiver. As in the Proposed Rule, § 380.35(b)(2) of the Final Rule incorporates the statutory exception.

Some comments suggested that an ''excusable neglect'' exception to late-filed claims similar to the Bankruptcy Code should be used. This suggestion is inapposite because, as discussed, the Dodd-Frank Act's late-filed claim exception encompasses claimants who are notified before the claims bar date but do not have sufficient time to prepare and file a claim before such date. In such a case, the claimant may show that it did not have notice of the appointment of the receiver in time to file by the claims bar date. Congress intended for late-filed claims to be disallowed unless the claimant qualifies for the late-filed claim exception. (See section 210(a)(3)(C) of the Act.)

One comment noted that under section 726(a) of the Bankruptcy Code, late-filed claims are paid ahead of claims for post-petition interest and distributions to the holders of equity interests. It was suggested that a similar treatment be adopted for the payment of late-filed claims in covered financial company receiverships. This suggestion cannot be adopted because Congress has established the order of priority of claims in the Dodd-Frank Act and the FDIC has not been given the authority to alter that priority scheme.

Section 380.35(b)(2)(i) has been revised in the Final Rule in order to accommodate specifically claims based on an act or omission of the receiver, such as a repudiation or breach of a contract, that occurs after the claims bar date. Section 210(a)(9)(D)(ii) of the Dodd-Frank Act deprives a court of jurisdiction over any claim relating to any act or omission of the FDIC as receiver unless the claimant first complies with the receivership administrative claims process. A party to a contract that is repudiated or breached by the receiver after the claims bar date, however, would be unable to timely file a claim and would not technically qualify for the statutory late-filed claim exception because it would be unable to show that it did not have notice of the appointment of the receiver prior to the claims bar date; accordingly, this party could neither comply with the claims process nor have a court determine its claim. In order to provide relief to a party in this situation, the Final Rule permits the receiver to consider a claim filed after the claims bar date if the claim is based on an act or omission of the receiver that occurs after the claims bar date. In the Proposed Rule, the late-filed claim exception had been expanded to encompass any claim that did not accrue until after the claims bar date. After consideration, it was determined that this provision would have been too broad because it could be read to encompass contingent claims which are addressed separately in § 380.39.

Decision period. Section 380.36 of the Final Rule provides that under the statute the receiver must notify a claimant of its decision to allow or disallow a claim prior to the 180th day after the claim is filed. The Final Rule also provides that the claimant and the receiver may extend the claims determination period by mutual agreement in writing. In accordance with the statute, the receiver must notify the claimant regarding its determination of the claim prior to the end of the extended claims determination period.

Notification of determination. As required by section 210(a)(3)(A)(i) of the Dodd-Frank Act, § 380.37 of the Final Rule provides that the receiver will notify the claimant that the claim is allowed or disallowed. The notification will be mailed to the claimant as set forth in section 210(a)(3)(A)(iii) of the Act, unless the claimant has filed its claim electronically, in which case the receiver may use electronic media for the notification. If the receiver disallows the claim, the notification will provide the reason(s) for the disallowance and also advise the claimant of the procedure for filing or continuing an action in court.

The Final Rule reiterates the provisions of section 210(a)(3)(A)(ii) of the Dodd-Frank Act that if the receiver fails to notify the claimant of any disallowance within 180 days after the claim is filed, or the end of any extension agreed to by the claimant, the claim will be deemed to be disallowed. The claimant may then file or continue an action in court as provided in section 210(a)(4) of the Act. The Final Rule has been revised to cite the statutory authority for this provision. Comments on this aspect of the rule suggested that after 180 days the claim should be deemed to be allowed instead of disallowed. Other comments suggested that the receiver should provide affirmative notification of the disallowance of a claim at the end of the claims determination period. These suggestions cannot be adopted because they are contrary to the provisions of the Act. In section 210(a)(3)(D)(ii) of the Act, Congress adopted the approach that the failure to notify the claimant of a disallowance within 180 days after the claim is filed is deemed to be a disallowance of the claim in order to impose a clear and reasonable time limit on the receiver's consideration of claims. Without such a time limit, the claims procedure would be inadequate and not subject to exhaustion as a prerequisite for judicial determination, which would be contrary to the intent of Congress. Once the claimant enters the receivership claims process by filing a claim, the claimant is on notice of the statutory provisions governing that process and will bear the responsibility to monitor the claims determination period in order to timely file or continue a lawsuit with respect to the claim.

Procedures for seeking judicial review of disallowed claim. Section 380.38 of the Final Rule implements the statutory procedures for a claimant to seek a judicial determination of its claim after the claim has been disallowed or partially disallowed by the FDIC as receiver. Consistent with section 210(a)(4) of the Dodd-Frank Act, a claimant may (a) file a lawsuit on its disallowed claim in the district court

where the covered financial company's principal place of business is located, or (b) continue a previously pending lawsuit.

The Final Rule clarifies that if the claimant continues a previously filed action, the claimant may continue such action in the court in which the case was pending before the appointment of the receiver, resolving any uncertainty whether the action should be ''continued'' in the district court where the covered financial company's principal place of business is located. (In the case of an action pending in state court, the receiver would have the authority to remove the action to federal court if it chose to do so.) Some comments suggested that the FDIC should designate the district court where the covered financial company's principal office is located as the exclusive forum for judicial review of claims. The FDIC must decline to adopt this suggestion; as discussed, the FDIC must follow the established statutory scheme and cannot alter court jurisdiction or venue when these issues have been decided by Congress.

As provided by statute, § 308.38(c) of the Final Rule provides that the claimant has 60 days to commence or continue an action regarding the disallowed claim. The time period for commencing or continuing a lawsuit would be calculated, as applicable, from the date of the notification of disallowance, the end of the 180-day claims determination date, or the end of the extended determination date, if any. If a claimant fails to file suit on a claim (or continue a pre-receivership lawsuit) before the end of the 60-day period, the claimant will have no further rights or remedies with respect to the claim. This time period is not subject to a tolling agreement between the FDIC and the claimant. The Final Rule affirms that exhaustion of the administrative claims process is a jurisdictional prerequisite for any court to adjudicate a claim against a covered financial company or the receiver, as provided in section 210(a)(9)(D) of the Dodd-Frank Act.

Provability of claims based on contingent obligations. Section 380.39 of the Final Rule addresses contingent claims, which was previously the subject of § 380.4 of the IFR. The holder of a contingent claim against the covered financial company will be required to file its claim by the claims bar date. Section 380.39(a) provides that the receiver will not disallow a claim solely because the claim is based on a contingent obligation. Instead, the receiver will estimate the value of a contingent claim as of the date of the appointment of the receiver. If the receiver repudiates a contingent obligation, repudiation damages shall be no less than the estimated value of the claim as of the date of the receiver's appointment. Comments suggested that any estimation of the value of a contingent claim be delayed until just prior to a final distribution by the receiver. This approach would be inconsistent with the statute because section 210(a)(3)(A) of the Dodd-Frank Act instructs the receiver to determine whether to allow a claim no later than 180 days after the claim is filed, subject to any extension agreed to by the claimant. Therefore, in accordance with the statute, the receiver will estimate the value of a contingent claim before the end of either the 180-day period beginning on the date the claim is filed or any mutually agreed-upon extension of this time period. Unless the contingency becomes absolute and fixed prior to the receiver's determination of the estimated value, the estimated value will be recognized as the allowed amount of the claim. The estimated value of the contingent claim will represent the receiver's determination of the claim for purposes of the exhaustion of administrative remedies by the claimant prior to seeking a judicial determination of the claim.

Secured claims. Because section 210(b)(5) of the Dodd-Frank Act provides that section 210 of the Dodd-Frank Act, which sets forth the powers and duties of the FDIC acting as receiver of a covered financial company, ''shall not affect secured claims or security entitlements in respect of assets or property held by the covered financial company,'' the Final Rule has been revised to more effectively safeguard the rights of secured claimants. The approach taken in the Final Rule should provide more legal certainty for the secured lenders of a systemically important financial institution.

A number of comments regarding the Proposed Rule expressed concerns about the valuation of property used as collateral, the ability of a secured claimant to exercise its rights against its collateral or to obtain adequate protection of its interest and the need for expedited judicial review of actions by the receiver affecting a secured claimant. The Final Rule contains several revised provisions to address those concerns, satisfy the statutory directive not to affect secured claims and harmonize with the relevant provisions of the Bankruptcy Code. With respect to judicial review, however, harmonization with the Bankruptcy Code is not possible. In contrast to a case under the Bankruptcy Code, in which a debtor's or trustee's actions are subject to prior approval by a court, a receivership of a covered financial company is an administrative process conducted by the FDIC as receiver. Under the Act, court jurisdiction is limited and subject to exhaustion of the receivership claims process. A claimant may have its day in court but only after the receiver has first made a determination regarding the claim or the claimant's rights.

Determination of secured claims. Section 380.50 has been revised in the Final Rule to model Bankruptcy Code section 506. Section 380.50(a) affirms that under section 210(a)(3)(D)(ii) of the Dodd-Frank Act, a claim is secured to the extent of the value of the property securing the claim by incorporating the principle that a claim that is secured by property of the covered financial company may be treated as an unsecured claim to the extent that the claim exceeds the fair market value of the property. Section 380.50(b) provides that the fair market value of such property shall be determined in light of the purpose of the valuation and of the proposed disposition or use of the property and at the time of the proposed disposition or use. To illustrate, if a secured claimant requests the receiver's consent to obtain possession of or exercise control over property that secures the claim, the receiver would value the property at the time of the request. If the receiver proposes to sell property that is subject to a security interest, the property will be valued at the time of the sale. By not specifying a particular point in time (such as the date of appointment of the receiver) when property will be valued, the problem of potential windfalls to either the secured claimant or the receiver should be avoided. The approach taken should provide more accurate valuations, protect the rights of secured creditors, and provide flexibility for the receiver.

Recovery of fees, etc. Section 380.50(c) provides that the receiver may recover from property subject to a security interest any reasonable and necessary costs and expenses of preserving or disposing of the property to the extent the claimant is benefited thereby. When provided for by agreement or State law, claims for interest, fees, costs, and charges are secured claims to the extent that the property has sufficient value to cover them. Section 380.50(d) recognizes that if the value of property subject to a security interest is greater than the amount of the claim, the claimant will be allowed, to the extent of the value of the property, interest and any reasonable fees, costs, or charges

provided for under the agreement or State statute under which the claim arose.

Consent to certain actions. Section 380.51 of the Final Rule addresses relief for a secured claimant from the effect of section 210(c)(13)(C) of the Dodd-Frank Act. Section 210(c)(13)(C) would delay any claimant holding a security interest or other lien against any property of a covered financial company from exercising its rights to obtain possession or control of the property for a period of 90 days beginning on the date of the appointment of the receiver for the company, unless the receiver consents. Secured claims that are not transferred to a bridge financial company or other acquiring entity but are retained in the receivership can be resolved either by the receiver selling the collateral and remitting the proceeds to the secured claimant up to the amount of the claim, or by the claimant liquidating any collateral itself. In either case, the claimant may file a claim with the receiver for any deficiency that exists after the value of the collateral is applied to the claim. The claimant may obtain judicial review if the receiver disallows the claim in whole or in part. Accordingly, § 380.51 has been revised in the Final Rule to facilitate this process by implementing a procedure for a secured claimant to obtain the receiver's consent to the claimant's taking possession or control of collateral. Under this procedure, a secured claimant may request the consent of the receiver for relief. The request for consent must be in writing and state the amount of the claim, a description of the property that secures the claim, the value of the property, the proposed disposition of the property by the claimant, including the expected date of such disposition, along with supporting documentation for each item, including an appraisal or other evidence establishing the value of the property. The receiver will grant its consent if the receiver determines that it will not use, sell or lease the property and therefore will not need to provide adequate protection of the claimant's interest. (Section 380.52 of the Final Rule describes the different ways that adequate protection may be provided.) If the receiver has not acted on the request for consent within 30 days after the request is made, consent will be deemed to have been granted. Section 380.51(d) affirms that regardless of whether the receiver has decided to withhold consent, the stay of section 210(c)(13)(C) will terminate 90 days after the appointment of the FDIC as receiver. The provisions of § 380.51 shall not apply to a director or officer liability contract, a financial institution bond, the rights of parties to qualified financial contracts or netting contracts, any extension of credit from a Federal reserve bank or the FDIC, or in a case where the receiver repudiates a secured contract.

The other provision of the Dodd-Frank Act that may affect secured claimants is section 210(q)(1)(B), pursuant to which property of a covered financial company in the hands of the FDIC as receiver is not subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the receiver. While this statutory provision was addressed in the consent provision that appeared in the Proposed Rule, the FDIC believes that it would be more appropriate to address this provision with a Statement of Policy that would be issued in the future by the FDIC. This approach was taken by the FDIC to address the comparable provision in the FDI Act, 12 U.S.C. 1825(b).

Adequate protection. Section 380.52 of the Final Rule addresses adequate protection for the interest of a secured claimant if the receiver decides to use or sell property subject to a security interest. If the receiver determines that it will use, sell, or lease such property, the receiver must provide adequate protection by (1) Making a cash payment or periodic cash payments to the claimant if the sale, use, or lease of the property or the grant of a security interest or other lien against the property by the receiver results in a decrease in the value of such claimant's security interest in such property; (2) providing to the claimant an additional or replacement lien to the extent that the sale, use, or lease of the property or the grant of a security interest against the property by the receiver results in a decrease in the value of the claimant's security interest in the property; or (3) providing any other relief that will result in the realization by the claimant of the indubitable equivalent of the claimant's security interest in such property. Adequate protection of the claimant's security interest will be presumed if the value of the property is not depreciating or is sufficiently greater than the amount of the claim so that the claimant's security interest is not impaired.

The text of § 380.53 of the Proposed Rule, which reiterated section 210(a)(5) of the Dodd-Frank Act concerning an expedited procedure for the determination of a claim of a secured creditor alleging irreparable harm if the ordinary claims procedure was followed, has been deleted from the Final Rule as unnecessary for purposes of the regulation. The expedited procedure is fully set forth in section 210(a)(5) of the Act.

Repudiation of secured contract. Section 380.53 of the Final Rule contains the text of § 380.52 of the Proposed Rule. This section confirms that under section 210(c)(12)(A) of the Dodd-Frank Act, the authority of the receiver to repudiate a contract of the covered financial company will not have the effect of avoiding any legally enforceable and perfected security interests in the property (except those avoidable as fraudulent or preferential transfers under section 210(a)(11)). This section also provides that after repudiation the security interest would no longer secure the contract but would instead secure any claim for repudiation damages. Accordingly, the receiver may consent to the claimant's liquidation of the collateral and application of the proceeds to the claim for repudiation damages. Comments supported the inclusion of this provision in the Final Rule.

The text of § 380.54 of the Proposed Rule, which concerned the sale of secured property by the receiver, has been deleted from the Final Rule. This subject is addressed in § 380.52 of the Final Rule.

The text of § 380.55 of the Proposed Rule, which provided that the receiver may redeem property of the covered financial company from a lien held by a secured creditor by paying the creditor in cash the fair market value of the property up to the value of its lien, has been deleted as unnecessary. The receiver already has the inherent ability to pay a secured claim anytime because such claims are excluded from the statutory order of priority for the payment of unsecured claims.

IV. Regulatory Analysis and Procedure

A. Paperwork Reduction Act

The Final Rule would not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. (5 U.S.C. 603(a)). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies

that the final rule will not have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities. The Final Rule will clarify rules and procedures for the liquidation of a nonviable systemically important financial company, which will provide internal guidance to FDIC personnel performing the liquidation of such a company and will address any uncertainty in the financial system as to how the orderly liquidation of such a company would operate. As such, the Final Rule will not have a significant economic impact on small entities.

C. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the Final Rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), (5 U.S.C. 801 *et seq.*) As required by the SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the Final Rule may be reviewed.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the Final Rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

E. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the Final Rule in a simple and straightforward manner.

List of Subjects in 12 CFR Part 380

Holding companies, Insurance companies.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends part 380 of title 12 of the Code of Federal Regulations as follows:

PART 380—ORDERLY LIQUIDATION AUTHORITY

■ 1. The authority citation for part 380 is revised to read as follows:

Authority: 12 U.S.C. 5389; 12 U.S.C. 5390(s)(3); 12 U.S.C. 5390(b)(1)(C); 12 U.S.C. 5390(a)(7)(D).

■ 2. Sections 380.1 through 380.9 are designated under a new subpart A, and the heading for new subpart A is added to read as follows:

Subpart A—General and Miscellaneous Provisions

Sec.
380.1 Definitions.
380.2 [Reserved]
380.3 Treatment of personal service agreements.
380.4 [Reserved]
380.5 Treatment of covered financial companies that are subsidiaries of insurance companies.
380.6 Limitation on liens on assets of covered financial companies that are insurance companies or covered subsidiaries of insurance companies.
380.7 Recoupment of compensation from senior executives and directors.
380.8 [Reserved]
380.9 Treatment of fraudulent and preferential transfers.
380.10–380.19 [Reserved]

■ 3. Revise § 380.1 to read as follows:

§ 380.1 Definitions.

For purposes of this part, the following terms are defined as follows:

Allowed claim. The term ''allowed claim'' means a claim against the covered financial company or receiver that is allowed by the Corporation as receiver or upon which a final non-appealable judgment has been entered in favor of a claimant against a receivership by a court with jurisdiction to adjudicate the claim.

Board of Governors. The term ''Board of Governors'' means the Board of Governors of the Federal Reserve System.

Bridge financial company. The term ''bridge financial company'' means a new financial company organized by the Corporation in accordance with 12 U.S.C. 5390(h) for the purpose of resolving a covered financial company.

Claim. The term ''claim'' means any right to payment from either the covered financial company or the Corporation as receiver, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

Compensation. The term ''compensation'' means any direct or indirect financial remuneration received from the covered financial company, including, but not limited to, salary; bonuses; incentives; benefits; severance pay; deferred compensation; golden parachute benefits; benefits derived from an employment contract, or other compensation or benefit arrangement; perquisites; stock option plans; post-employment benefits; profits realized from a sale of securities in the covered financial company; or any cash or non-cash payments or benefits granted to or for the benefit of the senior executive or director.

Corporation. The term ''Corporation'' means the Federal Deposit Insurance Corporation.

Covered financial company. The term ''covered financial company'' means (a) a financial company for which a determination has been made under 12 U.S.C. 5383(b) and (b) does not include an insured depository institution.

Covered subsidiary. The term ''covered subsidiary'' means a subsidiary of a covered financial company other than:

(1) An insured depository institution;
(2) An insurance company; or
(3) A covered broker or dealer.

Creditor. The term ''creditor'' means a person asserting a claim.

Director. The term ''director'' means a member of the board of directors of a company or of a board or committee performing a similar function to a board of directors with authority to vote on matters before the board or committee.

Dodd-Frank Act. The term ''Dodd-Frank Act'' shall mean the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 12 U.S.C. 5301 *et seq.* (2010).

Employee benefit plan. The term ''employee benefit plan'' has the meaning set forth in the Employee Retirement Income Security Act, 29 U.S.C. 1002(3).

Insurance company. The term ''insurance company'' means any entity that is:

(1) Engaged in the business of insurance,
(2) Subject to regulation by a State insurance regulator, and
(3) Covered by a State law that is designed to specifically deal with the rehabilitation, liquidation or insolvency of an insurance company.

Senior executive. The term ''senior executive'' means any person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company, whether or not: The person has an official title; the title designates the officer an assistant; or the person is serving without salary or other compensation. The chairman of

the board, the president, every vice president, the secretary, and the treasurer or chief financial officer, general partner and manager of a company are considered senior executives, unless the person is excluded, by resolution of the board of directors, the bylaws, the operating agreement or the partnership agreement of the company, from participation (other than in the capacity of a director) in major policymaking functions of the company, and the person does not actually participate therein.

§ 380.2 [Removed and reserved]

■ 4. Remove and reserve § 380.2.
■ 5. Revise § 380.3 to read as follows:

§ 380.3 Treatment of personal service agreements.

(a) For the purposes of this section, the term ''personal service agreement'' means a written agreement between an employee and a covered financial company or a bridge financial company setting forth the terms of employment. This term also includes an agreement between any group or class of employees and a covered financial company, or a bridge financial company, including, without limitation, a collective bargaining agreement.

(b)(1) If before repudiation or disaffirmance of a personal service agreement, the Corporation as receiver of a covered financial company, or a bridge financial company accepts performance of services rendered under such agreement, then:

(i) The terms and conditions of such agreement shall apply to the performance of such services; and

(ii) Any payments for the services accepted by the Corporation as receiver shall be treated as an administrative expense of the receiver.

(2) If a bridge financial company accepts performance of services rendered under such agreement, then the terms and conditions of such agreement shall apply to the performance of such services.

(c) No party acquiring a covered financial company or any operational unit, subsidiary or assets thereof from the Corporation as receiver or from any bridge financial company shall be bound by a personal service agreement unless the acquiring party expressly assumes the personal service agreement.

(d) The acceptance by the Corporation as receiver for a covered financial company, or by any bridge financial company or the Corporation as receiver for a bridge financial company of services subject to a personal service agreement shall not limit or impair the authority of the receiver to disaffirm or repudiate any personal service agreement in the manner provided for the disaffirmance or repudiation of any agreement under 12 U.S.C. 5390(c).

(e) Paragraph (b) of this section shall not apply to any personal service agreement with any senior executive or director of the covered financial company or covered subsidiary, nor shall it in any way limit or impair the ability of the receiver to recover compensation from any senior executive or director of a covered financial company under 12 U.S.C. 5390 and the regulations promulgated thereunder.

§ 380.4 [Removed and reserved]

■ 6. Remove and reserve § 380.4.
■ 7. Revise § 380.5 to read as follows:

§ 380.5 Treatment of covered financial companies that are subsidiaries of insurance companies.

The Corporation as receiver shall distribute the value realized from the liquidation, transfer, sale or other disposition of the direct or indirect subsidiaries of an insurance company, that are not themselves insurance companies, solely in accordance with the order of priorities set forth in 12 U.S.C. 5390(b)(1) and the regulations promulgated thereunder.

■ 8. Revise § 380.6 to read as follows:

§ 380.6 Limitation on liens on assets of covered financial companies that are insurance companies or covered subsidiaries of insurance companies.

(a) In the event that the Corporation makes funds available to a covered financial company that is an insurance company or to any covered subsidiary of an insurance company, or enters into any other transaction with respect to such covered entity under 12 U.S.C. 5384(d), the Corporation will exercise its right to take liens on any or all assets of the covered entities receiving such funds to secure repayment of any such transactions only when the Corporation, in its sole discretion, determines that:

(1) Taking such lien is necessary for the orderly liquidation of the entity; and

(2) Taking such lien will not either unduly impede or delay the liquidation or rehabilitation of such insurance company, or the recovery by its policyholders.

(b) This section shall not be construed to restrict or impair the ability of the Corporation to take a lien on any or all of the assets of any covered financial company or covered subsidiary in order to secure financing provided by the Corporation or the receiver in connection with the sale or transfer of the covered financial company or covered subsidiary or any or all of the assets of such covered entity.

■ 9. Add § 380.7 to subpart A to read as follows:

§ 380.7 Recoupment of compensation from senior executives and directors.

(a) *Substantially responsible.* The Corporation, as receiver of a covered financial company, may file an action to recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply. A senior executive or director shall be deemed to be substantially responsible for the failed condition of a covered financial company that is placed into receivership under the orderly liquidation authority of the Dodd-Frank Act if he or she:

(1) Failed to conduct his or her responsibilities with the degree of skill and care an ordinarily prudent person in a like position would exercise under similar circumstances, and

(2) As a result, individually or collectively, caused a loss to the covered financial company that materially contributed to the failure of the covered financial company under the facts and circumstances.

(b) *Presumptions.* The following presumptions shall apply for purposes of assessing whether a senior executive or director is substantially responsible for the failed condition of a covered financial company:

(1) It shall be presumed that a senior executive or director is substantially responsible for the failed condition of a covered financial company that is placed into receivership under the orderly liquidation authority of the Dodd-Frank Act under any of the following circumstances:

(i) The senior executive or director served as the chairman of the board of directors, chief executive officer, president, chief financial officer, or in any other similar role regardless of his or her title if in this role he or she had responsibility for the strategic, policymaking, or company-wide operational decisions of the covered financial company prior to the date that it was placed into receivership under the orderly liquidation authority of the Dodd-Frank Act;

(ii) The senior executive or director is adjudged liable by a court or tribunal of competent jurisdiction for having

breached his or her duty of loyalty to the covered financial company;

(iii) The senior executive was removed from the management of the covered financial company under 12 U.S.C. 5386(4); or

(iv) The director was removed from the board of directors of the covered financial company under 12 U.S.C. 5386(5).

(2) The presumption under paragraph (b)(1)(i) of this section may be rebutted by evidence that the senior executive or director conducted his or her responsibilities with the degree of skill and care an ordinarily prudent person in a like position would exercise under similar circumstances. The presumptions under paragraphs (b)(1)(ii), (b)(1)(iii) and (b)(1)(iv) of this section may be rebutted by evidence that the senior executive or director did not cause a loss to the covered financial company that materially contributed to the failure of the covered financial company under the facts and circumstances.

(3) The presumptions do not apply to:

(i) A senior executive hired by the covered financial company during the two years prior to the Corporation's appointment as receiver to assist in preventing further deterioration of the financial condition of the covered financial company; or

(ii) A director who joined the board of directors of the covered financial company during the two years prior to the Corporation's appointment as receiver under an agreement or resolution to assist in preventing further deterioration of the financial condition of the covered financial company.

(4) Notwithstanding that the presumption does not apply under paragraphs (b)(3)(i) and (ii) of this section, the Corporation as receiver still may pursue recoupment of compensation from a senior executive or director in paragraphs (b)(3)(i) or (ii) if they are substantially responsible for the failed condition of the covered financial company.

(c) *Savings Clause.* Nothing in this section shall limit or impair any rights of the Corporation as receiver under other applicable law, including any rights under Title II of the Dodd-Frank Act to pursue any other claims or causes of action it may have against senior executives and directors of the covered financial company for losses they cause to the covered financial company in the same or separate actions.

§ 380.8 [Added and reserved]

■ 10. Add and reserve § 380.8.

■ 11. Add § 380.9 to subpart A to read as follows:

§ 380.9 Treatment of fraudulent and preferential transfers.

(a) *Coverage.* This section shall apply to all receiverships in which the FDIC is appointed as receiver under 12 U.S.C. 5382(a) or 5390(a)(1)(E) of a covered financial company or a covered subsidiary, respectively, as defined in 12 U.S.C. 5381(a)(8) and (9).

(b) *Avoidance standard for transfer of property.* (1) In applying 12 U.S.C. 5390(a)(11)(H)(i)(II) to a transfer of property for purposes of 12 U.S.C. 5390(a)(11)(A), the Corporation, as receiver of a covered financial company or a covered subsidiary, which is thereafter deemed to be a covered financial company pursuant to 12 U.S.C. 5390(a)(1)(E)(ii), shall determine whether the transfer has been perfected such that a *bona fide* purchaser from such covered financial company or such covered subsidiary, as applicable, against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee.

(2) In applying 12 U.S.C. 5390(a)(11)(H)(i)(II) to a transfer of real property, other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, for purposes of 12 U.S.C. 5390(a)(11)(B), the Corporation, as receiver of a covered financial company or a covered subsidiary, which is thereafter deemed to be a covered financial company pursuant to 12 U.S.C. 5390(a)(1)(E)(ii), shall determine whether the transfer has been perfected such that a *bona fide* purchaser from such covered financial company or such covered subsidiary, as applicable, against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee. For purposes of this section, the term fixture shall be interpreted in accordance with U.S. Federal bankruptcy law.

(3) In applying 12 U.S.C. 5390(a)(11)(H)(i)(II) to a transfer of a fixture or property, other than real property, for purposes of 12 U.S.C. 5390(a)(11)(B), the Corporation, as receiver of a covered financial company or a covered subsidiary which is thereafter deemed to be a covered financial company pursuant to 12 U.S.C. 5390(a)(1)(E)(ii), shall determine whether the transfer has been perfected such that a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee, and the standard of whether the transfer is perfected such that a bona fide purchaser cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee of such property shall not apply to any such transfer under this paragraph (b)(3).

(c) *Grace period for perfection.* In determining when a transfer occurs for purposes of 12 U.S.C. 5390(a)(11)(B), the Corporation, as receiver of a covered financial company or a covered subsidiary, which is thereafter deemed to be a covered financial company pursuant to 12 U.S.C. 5390(a)(1)(E)(ii), shall apply the following standard:

(1) Except as provided in paragraph (c)(2) of this section, a transfer shall be deemed to have been made

(i) At the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time, except as provided in paragraph (c)(1)(ii) of this section;

(ii) At the time such transfer takes effect between the transferor and the transferee, with respect to a transfer of an interest of the transferor in property that creates a security interest in property acquired by the transferor:

(A) To the extent such security interest secures new value that was:

(*1*) Given at or after the signing of a security agreement that contains a description of such property as collateral;

(*2*) Given by or on behalf of the secured party under such agreement;

(*3*) Given to enable the transferor to acquire such property; and

(*4*) In fact used by the transferor to acquire such property; and

(B) That is perfected on or before 30 days after the transferor receives possession of such property;

(iii) At the time such transfer is perfected, if such transfer is perfected after the 30-day period described in paragraph (c)(1)(i) or (ii) of this section, as applicable; or

(iv) Immediately before the appointment of the Corporation as receiver of a covered financial company or a covered subsidiary which is thereafter deemed to be a covered financial company pursuant to 12 U.S.C. 5390(a)(1)(E)(ii), if such transfer is not perfected at the later of—

(A) The earlier of

(*1*) The date of the filing, if any, of a petition by or against the transferor under Title 11 of the United States Code; and

(*2*) The date of the appointment of the Corporation as receiver of such covered financial company or such covered subsidiary; or

(B) Thirty days after such transfer takes effect between the transferor and the transferee.

(2) For the purposes of this paragraph (c), a transfer is not made until the covered financial company or a covered subsidiary, which is thereafter deemed to be a covered financial company pursuant to 12 U.S.C. 5390(a)(1)(E)(ii), has acquired rights in the property transferred.

(d) Limitations. The provisions of this section do not act to waive, relinquish, limit or otherwise affect any rights or powers of the Corporation in any capacity, whether pursuant to applicable law or any agreement or contract.

§§ 380.10–380.19 [Reserved]

■ 11a. Add and reserve §§ 380.10–380.19 in subpart A.

■ 12. New subpart B is added to read as follows:

Subpart B—Priorities

Sec.
380.20 [Reserved]
380.21 Priorities.
380.22 Administrative expenses of the receiver.
380.23 Amounts owed to the United States.
380.24 Priority for loss of setoff rights.
380.25 Post-insolvency interest.
380.26 Effect of transfer of assets and obligations to a bridge financial company.
380.27 Treatment of similarly situated claimants.
380.28–380.29 [Reserved]

Subpart B—Priorities

§ 380.20 [Reserved]

§ 380.21 Priorities.

(a) The unsecured amount of allowed claims shall be paid in the following order of priority:

(1) Repayment of debt incurred by or credit obtained by the Corporation as receiver for a covered financial company, provided that the receiver has determined that it is otherwise unable to obtain unsecured credit for the covered financial company from commercial sources.

(2) Administrative expenses of the receiver, as defined in § 380.22, other than those described in paragraph (a)(1) of this section.

(3) Any amounts owed to the United States, as defined in § 380.23 (which is not an obligation described in paragraphs (a)(1) or (2) of this section).

(4) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in paragraph (a)(9) of this section), but only to the extent of $11,725 for each individual (as adjusted for inflation in accordance with paragraph (b) of this section) earned within 180 days before the date of appointment of the receiver.

(5) Contributions owed to employee benefit plans arising from services rendered within 180 days before the date of appointment of the receiver, to the extent of the number of employees covered by each such plan multiplied by $11,725 (as adjusted for inflation in accordance with paragraph (b) of this section); less the sum of (i) the aggregate amount paid to such employees under paragraph (a)(4) of this section, plus (ii) the aggregate amount paid by the Corporation as receiver on behalf of such employees to any other employee benefit plan.

(6) Any amounts due to creditors who have an allowed claim for loss of setoff rights as described in § 380.24.

(7) Any other general or senior liability of the covered financial company (which is not a liability described under paragraphs (a)(8), (9) or (11) of this section).

(8) Any obligation subordinated to general creditors (which is not an obligation described under paragraphs (a)(9) or (11) of this section).

(9) Any wages, salaries, or commissions, including vacation, severance, and sick leave pay earned, that is owed to senior executives and directors of the covered financial company.

(10) Post-insolvency interest in accordance with § 380.25, provided that interest shall be paid on allowed claims in the order of priority of the claims set forth in paragraphs (a)(1) through (9) of this section.

(11) Any amount remaining shall be distributed to shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company, in proportion to their relative equity interests.

(b) All payments under paragraphs (a)(4) and (a)(5) of this section shall be adjusted for inflation in the same manner that claims under 11 U.S.C. 507(a)(1)(4) are adjusted for inflation by the Judicial Conference of the United States pursuant to 11 U.S.C. 104.

(c) All unsecured claims of any category or priority described in paragraphs (a)(1) through (a)(10) of this section shall be paid in full or provision made for such payment before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a particular category or priority of claims in full, then distributions to creditors in such category or priority shall be made *pro rata.* A subordination agreement is enforceable with respect to the priority of payment of allowed claims within any creditor class or among creditor classes to the extent that such agreement is enforceable under applicable non-insolvency law.

§ 380.22 Administrative expenses of the receiver.

(a) The term ''administrative expenses of the receiver'' includes those actual and necessary pre- and post-failure costs and expenses incurred by the Corporation in connection with its role as receiver in liquidating the covered financial company; together with any obligations that the receiver for the covered financial company determines to be necessary and appropriate to facilitate the smooth and orderly liquidation of the covered financial company. Administrative expenses of the Corporation as receiver for a covered financial company include:

(1) Contractual rent pursuant to an existing lease or rental agreement accruing from the date of the appointment of the Corporation as receiver until the later of

(i) The date a notice of the dissaffirmance or repudiation of such lease or rental agreement is mailed, or

(ii) The date such disaffirmance or repudiation becomes effective; provided that the lesser of such lease is not in default or breach of the terms of the lease.

(2) Amounts owed pursuant to the terms of a contract for services performed and accepted by the receiver after the date of appointment of the receiver up to the date the receiver repudiates, terminates, cancels or otherwise discontinues such contract or notifies the counterparty that it no longer accepts performance of such services;

(3) Amounts owed under the terms of a contract or agreement executed in writing and entered into by the Corporation as receiver for the covered financial company after the date of appointment, or any contract or agreement entered into by the covered financial company before the date of appointment of the receiver that has been expressly approved in writing by the receiver after the date of appointment; and

(4) Expenses of the Inspector General of the Corporation incurred in carrying out its responsibilities under 12 U.S.C. 5391(d).

(b) Obligations to repay any extension of credit obtained by the Corporation as

receiver through enforcement of any contract to extend credit to the covered financial company that was in existence prior to appointment of the receiver pursuant to 12 U.S.C. 5390(c)(13)(D) shall be treated as administrative expenses of the receiver. Other unsecured credit extended to the receivership shall be treated as administrative expenses except with respect to debt incurred by, or credit obtained by, the Corporation as receiver for a covered financial company as described in § 380.21(a)(1).

§ 380.23 Amounts owed to the United States.

(a) The term ''amounts owed to the United States'' as used in § 380.21(a)(3) includes all unsecured amounts owed to the United States, other than expenses included in the definition of administrative expenses of the receiver under § 380.22 that are related to funds provided for the orderly liquidation of a covered financial company, funds provided to avoid or mitigate adverse effects on the financial stability of the United States or unsecured amounts owed to the U.S. Treasury on account of tax liabilities of the covered financial company, without regard for whether such amounts are included as debt or capital on the books and records of the covered financial company. Such amounts shall include obligations incurred before and after the appointment of the Corporation as receiver. Without limitation, ''amounts owed to the United States'' include all of the following, which all shall have equal priority under § 380.21(a)(3):

(1) Unsecured amounts owed to the Corporation for any extension of credit by the Corporation, including any amounts made available under 12 U.S.C. 5384(d);

(2) Unsecured amounts owed to the U.S. Treasury on account of unsecured tax liabilities of the covered financial company;

(3) Unsecured amounts paid or payable by the Corporation pursuant to its guarantee of any debt issued by the covered financial company under the Temporary Liquidity Guaranty Program, 12 CFR part 370, any widely available debt guarantee program authorized under 12 U.S.C. 5612, or any other debt or obligation of any kind or nature that is guaranteed by the Corporation;

(4) The unsecured amount of any debt owed to a Federal reserve bank including loans made through programs or facilities authorized under the Federal Reserve Act, 12 U.S.C. 221 *et seq.;* and

(5) Any unsecured amount expressly designated in writing in a form acceptable to the Corporation by the appropriate United States department, agency or instrumentality that shall specify the particular debt, obligation or amount to be included as an ''amount owed to the United States'' for the purpose of this rule at the time of such advance, guaranty or other transaction.

(b) Other than those amounts included in paragraph (a) of this section, unsecured amounts owed to a department, agency or instrumentality of the United States that are obligations incurred in the ordinary course of the business of the covered financial company prior to the appointment of the receiver generally will not be in the class of claims designated as ''amounts owed to the United States'' under section 380.21(a)(3), including, but not limited to:

(1) Unsecured amounts owed to government sponsored entities including, without limitation, the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Corporation;

(2) Unsecured amounts owed to Federal Home Loan Banks; and

(3) Unsecured amounts owed as satisfaction of filing, registration or permit fees due to any government department, agency or instrumentality.

(c) The United States may, in its sole discretion, consent to subordinate the repayment of any amount owed to the United States to any other obligation of the covered financial company provided that such consent is provided in writing in a form acceptable to the Corporation by the appropriate department, agency or instrumentality and shall specify the particular debt, obligation or other amount to be subordinated including the amount thereof and shall reference this paragraph (c) or 12 U.S.C. 5390(b)(1); and provided further that unsecured claims of the United States shall, at a minimum, have a higher priority than liabilities of the covered financial company that count as regulatory capital on the books and records of the covered financial company.

§ 380.24 Priority of claims arising out of loss of setoff rights.

(a) Notwithstanding any right of any creditor to offset a mutual debt owed by such creditor to any covered financial company that arose before the date of appointment of the receiver against a claim by such creditor against the covered financial company, the Corporation as receiver may sell or transfer any assets of the covered financial company to a bridge financial company or to a third party free and clear of any such rights of setoff.

(b) If the Corporation as receiver sells or transfers any asset free and clear of the setoff rights of any party, such party shall have a claim against the receiver in the amount of the value of such setoff established as of the date of the sale or transfer of such assets, provided that the setoff rights meet all of the criteria established under 12 U.S.C. 3590(a)(12).

(c) Any allowed claim pursuant to 12 U.S.C. 5390(a)(12) shall be paid prior to any other general or senior liability of the covered financial company described in section 380.21(a)(7). In the event that the setoff amount is less than the amount of the allowed claim, the balance of the allowed claim shall be paid at the otherwise applicable level of priority for such category of claim under § 380.21.

(d) Nothing in this section shall modify in any way the treatment of qualified financial contracts under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

§ 380.25 Post-insolvency interest.

(a) *Date of accrual.* Post-insolvency interest shall be paid at the post-insolvency interest rate calculated on the principal amount of an allowed claim from the later of (i) the date of the appointment of the Corporation as receiver for the covered financial company; or (ii) in the case of a claim arising or becoming fixed and certain after the date of the appointment of the receiver, the date such claim arises or becomes fixed and certain.

(b) *Interest rate.* Post-insolvency interest rate shall equal, for any calendar quarter, the coupon equivalent yield of the average discount rate set on the three-month U.S. Treasury bill at the last auction held by the United States Treasury Department during the preceding calendar quarter. Post-insolvency interest shall be computed quarterly and shall be computed using a simple interest method of calculation.

(c) *Principal amount.* The principal amount of an allowed claim shall be the full allowed claim amount, including any interest that may have accrued to the extent such interest is included in the allowed claim.

(d) *Post-insolvency interest distributions.* (1) Post-insolvency interest shall only be distributed following satisfaction of the principal amount of all creditor claims set forth in § 380.21(a)(1) through 380.21(a)(9) and prior to any distribution pursuant to § 380.21(a)(11).

(2) Post-insolvency interest distributions shall be made at such time as the Corporation as receiver determines that such distributions are appropriate and only to the extent of

funds available in the receivership estate. Post-insolvency interest shall be calculated on the outstanding principal amount of an allowed claim, as reduced from time to time by any interim distributions on account of such claim by the receiver.

§ 380.26 Effect of transfer of assets and obligations to a bridge financial company.

(a) The purchase of any asset or assumption of any asset or liability of a covered financial company by a bridge financial company, through the express agreement of such bridge financial company, constitutes assumption of any contract or agreement giving rise to such asset or liability. Such contracts or agreements, together with any contract the bridge financial company may through its express agreement enter into with any other party, shall become the obligation of the bridge financial company from and after the effective date of the purchase, assumption or agreement, and the bridge financial company shall have the right and obligation to observe, perform and enforce their terms and provisions. In the event that the Corporation shall act as receiver of the bridge financial company any allowed claim arising out of any breach of such contract or agreement by the bridge financial company shall be paid as an administrative expense of the receiver of the bridge financial company.

(b) In the event that the Corporation as receiver of a bridge financial company shall act to dissolve the bridge financial company, it shall wind up the affairs of the bridge financial company in conformity with the laws, rules and regulations relating to the liquidation of covered financial companies, including the laws, rules and regulations governing priorities of claims, subject however to the authority of the Corporation to authorize the bridge financial company to obtain unsecured credit or issue unsecured debt with priority over any or all of the other unsecured obligations of the bridge financial company, provided that unsecured debt is not otherwise generally available to the bridge financial company.

(c) Upon the final dissolution or termination of the bridge financial company whether following a merger or consolidation, a stock sale, a sale of assets, or dissolution and liquidation at the end of the term of existence of such bridge financial company, any proceeds that remain after payment of all administrative expenses of the bridge financial company and all other claims against such bridge financial company will be distributed to the receiver for the related covered financial company.

§ 380.27 Treatment of similarly situated claimants.

(a) For the purposes of this section, the term ''long-term senior debt'' means senior debt issued by the covered financial company to bondholders or other creditors that has a term of more than 360 days. It does not include partially funded, revolving or other open lines of credit that are necessary to continuing operations essential to the receivership or any bridge financial company, nor to any contracts to extend credit enforced by the receiver under 12 U.S.C. 5390(c)(13)(D).

(b) In applying any provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act permitting the Corporation as receiver to exercise its discretion, upon appropriate determination, to make payments or credit amounts, pursuant to 12 U.S.C. 5390(b)(4), (d)(4), or (h)(5)(E) to or for some creditors but not others similarly situated at the same level of payment priority, the receiver shall not exercise such authority in a manner that would result in the following recovering more than the amount established and due under 12 U.S.C. 5390(b)(1), or other priorities of payment specified by law:

(1) Holders of long-term senior debt who have a claim entitled to priority of payment at the level set out under 12 U.S.C. 5390(b)(1)(E);

(2) Holders of subordinated debt who have a claim entitled to priority of payment at the level set out under 12 U.S.C. 5390(b)(1)(F);

(3) Shareholders, members, general partners, limited partners, or other persons who have a claim entitled to priority of payment at the level set out under 12 U.S.C. 5390 (b)(1)(H); or

(4) Other holders of claims entitled to priority of payment at the level set out under 12 U.S.C. 5390(b)(1)(E) unless the Corporation, through the affirmative vote of a majority the members of the Board of Directors then serving, and in its sole discretion, specifically determines that additional payments or credit amounts to such holders are necessary and meet all of the requirements under 12 U.S.C. 5390(b)(4), (d)(4), or (h)(5)(E), as applicable. The authority of the Board to make the foregoing determination cannot be delegated.

§§ 380.28–380.29 [Reserved]

■ 13. New subpart C is added to read as follows:

Subpart C—Receivership Administrative Claims Process

Sec.
380.30 Receivership administrative claims process.
380.31 Scope.
380.32 Claims bar date.
380.33 Notice requirements.
380.34 Procedures for filing claim.
380.35 Determination of claims.
380.36 Decision period.
380.37 Notification of determination.
380.38 Procedures for seeking judicial review of disallowed claim.
380.39 Contingent claims.
380.40–380.49 [Reserved]
380.50 Determination of secured claims.
380.51 Consent to certain actions.
380.52 Adequate protection.
380.53 Repudiation of secured contract.

Subpart C—Receivership Administrative Claims Process

§ 380.30 Receivership administrative claims process.

The Corporation as receiver of a covered financial company shall determine claims against the covered financial company and the receiver of the covered financial company in accordance with the procedures set forth in 12 U.S.C. 5390(a)(2)–(5) and the regulations promulgated by the Corporation.

§ 380.31 Scope.

Nothing in this subpart C shall apply to any liability or obligation of a bridge financial company or its assets or liabilities, or to any extension of credit from a Federal reserve bank or the Corporation to a covered financial company.

§ 380.32 Claims bar date.

Upon its appointment as receiver for a covered financial company, the Corporation as receiver shall establish a claims bar date by which date creditors of the covered financial company shall present their claims, together with proof, to the receiver. The claims bar date shall be not less than 90 days after the date on which the notice to creditors to file claims is first published under § 380.33(a).

§ 380.33 Notice requirements.

(a) *Notice by publication.* Promptly after its appointment as receiver for a covered financial company, the Corporation as receiver shall publish a notice to the creditors of the covered financial company to file their claims with the receiver no later than the claims bar date. The Corporation as receiver shall republish such notice 1 month and 2 months, respectively, after the date the notice is first published. The notice to creditors shall be

published in one or more newspapers of general circulation where the covered financial company has its principal place or places of business. In addition to such publication in a newspaper, the Corporation as receiver may post the notice on the FDIC's Web site at *www.fdic.gov.*

(b) *Notice by mailing.* At the time of the first publication of the notice to creditors, the Corporation as receiver shall mail a notice to present claims no later than the claims bar date to any creditor shown in the books and records of the covered financial company. Such notice shall be sent to the last known address of the creditor appearing in the books and records or appearing in any claim found in the records of the covered financial company.

(c) *Notice by electronic media.* After publishing and mailing notice as required by paragraphs (a) and (b) of this section, the Corporation as receiver may communicate by electronic media with any claimant who expressly agrees to such form of communication.

(d) *Discovered claimants.* Upon discovery of the name and address of a claimant not appearing in the books and records of the covered financial company, the Corporation as receiver shall, not later than 30 days after the discovery of such name and address, mail a notice to such claimant to file a claim no later than the claims bar date. Any claimant not appearing on the books and records that is discovered before the claims bar date shall be required to file a claim before the claims bar date, subject to the exception of § 380.35(b)(2). If a claimant not appearing on the books and records is discovered after the claims bar date, the Corporation as receiver shall notify the claimant to file a claim by a date not later than 90 days from the date appearing on the notice that is mailed to such creditor. Any claim filed after such date shall be disallowed, and such disallowance shall be final.

§ 380.34 Procedures for filing claim.

(a) *In general.* The Corporation as receiver shall provide, in a reasonably practicable manner, instructions for filing a claim, including by the following means:

(1) Providing contact information in the publication notice;

(2) Including in the mailed notice a proof of claim form that has filing instructions; or

(3) Posting filing instructions on the Corporation's public Web site at *www.fdic.gov.*

(b) *When claim is deemed filed.* A claim that is mailed to the receiver in accordance with the instructions established under paragraph (a) of this section shall be deemed to be filed as of the date of postmark. A claim that is sent to the receiver by electronic media or fax in accordance with the instructions established under paragraph (a) shall be deemed to be filed as of the date of transmission by the claimant.

(c) *Class claimants.* If a claimant is a member of a class for purposes of a class action lawsuit, whether or not the class has been certified by a court, each claimant must file its claim with the Corporation as receiver separately.

(d) *Indenture trustee.* A trustee appointed under an indenture or other applicable trust document related to investments or other financial activities may file a claim on behalf of the persons who appointed the trustee.

(e) *Legal effect of filing.* (1) Pursuant to 12 U.S.C. 5390(a)(3)(E)(i), the filing of a claim with the receiver shall constitute a commencement of an action for purposes of any applicable statute of limitations.

(2) *No prejudice to continuation of action.* Pursuant to 12 U.S.C. 5390(a)(3)(E)(ii) and subject to 12 U.S.C. 5390(a)(8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue, after the receiver's determination of the claim, any action which was filed before the date of appointment of the receiver for the covered financial company.

§ 380.35 Determination of claims.

(a) *In general.* The Corporation as receiver shall allow any claim received by the receiver on or before the claims bar date if such claim is proved to the satisfaction of the receiver. Except as provided in 12 U.S.C. 5390(a)(3)(D)(iii), the Corporation as receiver may disallow any portion of any claim by a creditor or claim of a security, preference, setoff, or priority which is not proved to the satisfaction of the receiver.

(b) *Disallowance of claims filed after the claims bar date.* (1) Except as otherwise provided in this section, any claim filed after the claims bar date shall be disallowed, and such disallowance shall be final, as provided by 12 U.S.C. 5390(a)(3)(C)(i).

(2) *Certain exceptions.* Paragraph (b)(1) of this section shall not apply with respect to any claim filed by a claimant after the claims bar date and such claim shall be considered by the receiver if:

(i) The claimant did not receive notice of the appointment of the receiver in time to file such claim before the claims bar date, or the claim is based upon an act or omission of the Corporation as receiver that occurs after the claims bar date has passed, and

(ii) The claim is filed in time to permit payment. A claim is ''filed in time to permit payment'' when it is filed before a final distribution is made by the receiver.

§ 380.36 Decision period.

(a) *In general.* Prior to the 180th day after the date on which a claim against a covered financial company or the Corporation as receiver is filed with the receiver, the receiver shall notify the claimant whether it allows or disallows the claim.

(b) *Extension of time.* The 180-day period described in paragraph (a) of this section may be extended by a written agreement between the claimant and the Corporation as receiver executed not later than 180 days after the date on which the claim against the covered financial company or the receiver is filed with the receiver. If an extension is agreed to, the Corporation as receiver shall notify the claimant whether it allows or disallows the claim prior to the end of the extended claims determination period.

§ 380.37 Notification of determination.

(a) *In general.* The Corporation as receiver shall notify the claimant by mail of the decision to allow or disallow the claim. Notice shall be mailed to the address of the claimant as it last appears on the books, records, or both of the covered financial company; in the claim filed by the claimant with the Corporation as receiver; or in documents submitted in the proof of the claim. If the claimant has filed the claim electronically, the receiver may notify the claimant of the determination by electronic means.

(b) *Contents of notice of disallowance.* If the Corporation as receiver disallows a claim, the notice to the claimant shall contain a statement of each reason for the disallowance, and the procedures required to file or continue an action in court.

(c) *Failure to notify deemed to be disallowance.* If the Corporation as receiver does not notify the claimant before the end of the 180-day claims determination period, or before the end of any extended claims determination period, the claim shall be deemed to be disallowed, and the claimant may file or continue an action in court pursuant to 12 U.S.C. 5390(a)(4)(A).

§ 380.38 Procedures for seeking judicial determination of disallowed claim.

(a) *In general.* In order to seek a judicial determination of a claim that has been disallowed, in whole or in

part, by the Corporation as receiver, the claimant, pursuant to 12 U.S.C. 5390(a)(4)(A), may either:

(1) File suit on such claim in the district or territorial court of the United States for the district within which the principal place of business of the covered financial company is located; or

(2) Continue an action commenced before the date of appointment of the receiver, in the court in which the action was pending.

(b) *Timing.* Pursuant to 12 U.S.C. 5390(a)(4)(B), a claimant who seeks a judicial determination of a claim disallowed by the Corporation as receiver must file suit on such claim before the end of the 60-day period beginning on the earlier of:

(1) The date of any notice of disallowance of such claim;

(2) The end of the 180-day claims determination period; or

(3) If the claims determination period was extended with respect to such claim under § 380.36(b), the end of such extended claims determination period.

(c) *Statute of limitations.* Pursuant to 12 U.S.C. 5390(a)(4)(C), if any claimant fails to file suit on such claim (or to continue an action on such claim commenced before the date of appointment of the Corporation as receiver) prior to the end of the 60-day period described in 12 U.S.C. 5390(a)(4)(B), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(d) *Jurisdiction.* Pursuant to 12 U.S.C. 5390(a)(9)(D), unless the claimant has first exhausted its administrative remedies by obtaining a determination from the receiver regarding a claim filed with the receiver, no court shall have jurisdiction over:

(1) Any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Corporation may acquire from itself as such receiver; or

(2) Any claim relating to any act or omission of such covered financial company or the Corporation as receiver.

§ 380.39 Contingent claims.

(a) The Corporation as receiver shall not disallow a claim based on an obligation of the covered financial company solely because the obligation is contingent. To the extent the obligation is contingent, the receiver shall estimate the value of the claim, as such value is measured based upon the likelihood that such contingent obligation would become fixed and the probable magnitude thereof.

(b) If the receiver repudiates a contingent obligation of a covered financial company consisting of a guarantee, letter of credit, loan commitment, or similar credit obligation, the actual direct compensatory damages for repudiation shall be no less than the estimated value of the claim as of the date the Corporation was appointed receiver of the covered financial company, as such value is measured based upon the likelihood that such contingent claim would become fixed and the probable magnitude thereof.

(c) The Corporation as receiver shall estimate the value of a claim under paragraphs (a) or (b) of this section no later than 180 days after the claim is filed, unless such period is extended by a written agreement between the claimant and the receiver.

(d) Except for a contingent claim that becomes absolute and fixed prior to the receiver's determination of the estimated value, such estimated value of a contingent claim shall be recognized as the allowed amount of the claim for purposes of distribution.

(e) The estimated value of a contingent claim shall constitute the receiver's determination of the claim for purposes of § 380.38(d) and 12 U.S.C. 5390(a)(9)(D).

§ 380.40–380.49 [Reserved]

§ 380.50 Determination of secured claims.

(a) In the case of a claim against a covered financial company that is secured by any property of the covered financial company, the Corporation as receiver shall determine the amount of the claim, whether the claimant's security interest is legally enforceable and perfected, the priority of the claimant's security interest, and the fair market value of the property that is subject to the security interest. The Corporation as receiver may treat the portion of the claim which exceeds an amount equal to the fair market value of such property as an unsecured claim.

(b) The fair market value of any property of a covered financial company that secures a claim shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property and at the time of such proposed disposition or use.

(c) The Corporation as receiver may recover from any property of a covered financial company that secures a claim the reasonable and necessary costs and expenses of preserving or disposing of such property to the extent of any benefit to the claimant, including the payment of all ad valorem property taxes with respect to such property.

(d) To the extent that a claim is secured by property of a covered financial company and the value of such property, after any recovery under paragraph (c) of this section, is greater than the amount of such claim, there shall be allowed to the claimant a secured claim for interest on such claim and any reasonable fees, costs, or charges provided for under the agreement or State statute under which the claim arose to the extent of the value of such property.

§ 380.51 Consent to certain actions.

(a) *In general.* Any claimant alleging a legally valid and enforceable or perfected security interest in property of a covered financial company or control of any legally valid and enforceable security entitlement in respect of any asset held by the covered financial company for which the Corporation has been appointed receiver may seek the consent of the receiver for relief from the provisions of 12 U.S.C. 5390(c)(13)(C).

(b) *Contents of request.* A request for consent of the Corporation as receiver for relief from the provisions of 12 U.S.C. 5390(c)(13)(C) shall be in writing and contain the following information:

(1) The amount of the claim, with supporting documentation;

(2) A description of the property that secures the claim, with supporting documentation of the claimant's interest in the property;

(3) The value of the property, as established by an appraisal or other supporting documentation; and

(4) The proposed disposition of the property by the claimant, including the expected date of such disposition.

(c) *Determination by receiver.* The Corporation as receiver shall grant its consent to a request for relief from the provisions of 12 U.S.C. 5390(c)(13)(C) if it determines that the claimant has a legally valid and enforceable or perfected security interest or other lien against the property of a covered financial company and the receiver will not use, sell, or lease the property. If the Corporation as receiver determines that it will use, sell, or lease such property and that adequate protection is necessary and appropriate, the receiver may provide adequate protection instead of granting consent.

(d) *Consent deemed granted.* If the Corporation as receiver has not notified the claimant of the determination whether to grant or withhold consent under this section within 30 days after

a request for consent has been submitted, consent shall be deemed to be granted.

(e) *Expiration by operation of law.* Notwithstanding any determination by the Corporation as receiver to withhold consent under this section, the prohibitions described in 12 U.S.C. 5390(c)(13)(C)(i) are no longer applicable 90 days after the appointment of the receiver.

(f) *Limitations.* Any consent granted by the Corporation as receiver under this section shall not act to waive or relinquish any rights granted to the Corporation in any capacity, pursuant to any other applicable law or any agreement or contract, and shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the Corporation as receiver to take any action or to exercise any power not specifically mentioned, including but not limited to any rights, powers or remedies of the receiver regarding transfers taken in contemplation of the covered financial company's insolvency or with the intent to hinder, delay or defraud the covered financial company or the creditors of such company, or that is a fraudulent transfer under applicable law.

(g) *Exceptions.* (1) This section shall not apply in the case of a contract that is repudiated or disaffirmed by the Corporation as receiver.

(2) This section shall not apply to a director or officer liability insurance contract, a financial institution bond, the rights of parties to certain qualified financial contracts pursuant to 12 U.S.C. 5390(c)(8), the rights of parties to netting contracts pursuant to 12 U.S.C. 4401 et seq., or any extension of credit from any Federal reserve bank or the Corporation to any covered financial company or any security interest in the assets of a covered financial company securing any such extension of credit.

§ 380.52 Adequate protection.

(a) If the Corporation as receiver determines that it will use, sell, or lease or grant a security interest or other lien against property of the covered financial company that is subject to a security interest of a claimant, the receiver shall provide adequate protection by any of the following means:

(1) Making a cash payment or periodic cash payments to the claimant to the extent that the sale, use, or lease of the property or the grant of a security interest or other lien against the property by the Corporation as receiver results in a decrease in the value of such claimant's security interest in the property;

(2) Providing to the claimant an additional or replacement lien to the extent that the sale, use, or lease of the property or the grant of a security interest against the property by the Corporation as receiver results in a decrease in the value of the claimant's security interest in the property; or

(3) Providing any other relief that will result in the realization by the claimant of the indubitable equivalent of the claimant's security interest in the property.

(b) Adequate protection of the claimant's security interest will be presumed if the value of the property is not depreciating or is sufficiently greater than the amount of the claim so that the claimant's security interest is not impaired.

§ 380.53 Repudiation of secured contract.

To the extent that a contract to which a covered financial company is a party is secured by property of the covered financial company, the repudiation of the contract by the Corporation as receiver shall not be construed as permitting the avoidance of any legally enforceable and perfected security interest in the property, and the security interest shall secure any claim for repudiation damages.

By order of the Board of Directors.

Dated at Washington, DC, this 6th day of July 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–17397 Filed 7–14–11; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1305; Directorate Identifier 2010–NM–074–AD; Amendment 39–16749; AD 2011–15–02]

RIN 2120–AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all Model 382, 382B, 382E, 382F, and 382G airplanes. That AD currently requires revising the FAA-approved maintenance program by incorporating new airworthiness limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also requires the accomplishment of certain fuel system modifications, the initial inspections of certain repetitive fuel system limitations to phase in those inspections, and repair if necessary. This new AD corrects certain part number references, adds an additional inspection area, and for certain airplanes, requires certain actions to be re-accomplished according to revised service information. This AD was prompted by a report of incorrect accomplishment information in the service information cited by the existing AD. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective August 19, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 19, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 3, 2008 (73 FR 56464, dated September 29, 2008).

ADDRESSES: For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, Georgia 30063; telephone 770–494–5444; fax 770–494–5445; e-mail *ams.portal@lmco.com*; Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building

Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Neil Duggan, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5576; fax: (404) 474–5606; e-mail: *neil.duggan@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede airworthiness directive (AD) 2008–20–01, amendment 39–15680 (73 FR 56464, September 29, 2008). That AD applies to the specified products. The NPRM published in the **Federal Register** on January 5, 2011 (76 FR 485). That NPRM proposed to continue to require revising the maintenance program by incorporating new airworthiness limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That NPRM also proposed to continue to require the accomplishment of certain fuel system modifications, the initial inspections of certain repetitive fuel system limitations to phase in those inspections, and repair if necessary. That NPRM also proposed to correct certain part number references, add an additional inspection area, and for certain airplanes, require certain actions to be re-accomplished according to revised service information.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal and the FAA's response to the comment.

Request To Revise Cost Estimate

Lynden Air Cargo requested that the cost for revising the Instructions for Continued Airworthiness be included in the Costs of Compliance estimate. Lynden Air Cargo stated that there is a significant amount of work-hours associated with revising ''company manuals, job cards, maintenance programs, computerized tracking programs and record keeping documents'' so that the operator can comply with the requirements of a new AD. Lynden Air Cargo estimated that these actions will take at least 80 work-hours for its office staff, and estimated that this cost would affect other operators. Lynden Air Cargo also pointed out that this work load for the office staff will have a greater impact on smaller fleet operators with smaller staff.

We agree that a requirement of the new AD will require an update of the maintenance program to incorporate references to revised service information. This action is estimated to take approximately 1 work-hour per airplane. However, we disagree with increasing the estimated work-hours for the time that it takes for writing job cards, tracking programs, or record-keeping, since those actions are not directly required by this AD. The costs specified by Lynden Air Cargo will not be the same for all operators. The Costs of Compliance estimate has been revised accordingly.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 62 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD. The average labor rate per hour is $85. The costs of the new requirements of this AD are as follows:

ESTIMATED COSTS FOR NEW ACTIONS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection of fuel probes	24	None	$2,040, per inspection cycle	24	$48,960, per inspection cycle.
Maintenance program revision	1	None	$85	24	$2,040.
Actions necessary for airplanes on which Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006, has been done.	24	None	$2,040	24	$48,960.

The current costs for AD 2008–20–01 are repeated for the convenience of affected operators, as follows:

ESTIMATED COSTS FOR ACTIONS REQUIRED BY AD 2008–20–01

Action	Work hours	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Maintenance program revision	1	None	$85	24	$2,040
Installation of new, improved fuel dump masts	12	$10,288	$11,308	24	$271,392
Dry bay zonal inspection, inspection and repair of static ground terminals, marking the wiring for the fuel quantity indicating system, initial inspection of lightning and static bonding jumpers.	952	None	$80,920	24	$1,942,080
Installation of GFIs and flame arrestors	120	$115,000	$125,200	24	$3,004,800
Initial inspection of GFIs and flame arrestors	8	None	$680	24	$16,320
Installation of lightning bonding jumpers	910	$10,000	$87,350	24	$2,096,400

ESTIMATED COSTS FOR ACTIONS REQUIRED BY AD 2008–20–01—Continued

Action	Work hours	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Sealant application	320	None	$27,200	24	$652,800

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2008–20–01, Amendment 39–15680 (73 FR 56464, September 29, 2008), and adding the following new AD:

2011–15–02 Lockheed Martin Corporation/Lockheed Martin Aeronautics Company: Amendment 39–16749; Docket No. FAA–2010–1305; Directorate Identifier 2010–NM–074–AD.

Effective Date

(a) This airworthiness directive (AD) is effective August 19, 2011.

Affected ADs

(b) This AD supersedes AD 2008–20–01, Amendment 39–15680.

Applicability

(c) This AD applies to all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (o) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from a design review of the fuel tank systems. The Federal Aviation Administration is issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

RESTATEMENT OF REQUIREMENTS OF AD 2008–20–01, WITH NEW SERVICE INFORMATION:

Maintenance Program Revision

(g) Before December 16, 2008, revise the maintenance program to incorporate the fuel system limitations (FSLs) and the critical design configuration control limitations (CDCCLs) specified in the Accomplishment Instructions of the Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008; except as provided by paragraphs (g)(1), (g)(2), and (g)(3) of this AD, and except that the modifications and initial inspections specified in table 1 of this AD must be done at the compliance time specified in paragraph (h) of this AD.

(1) For the CDCCLs specified in paragraphs 2.C.(3)(e), 2.C.(3)(h), 2.C.(4)(a), 2.C.(5)(c), 2.C.(7)(h), and 2.C.(8) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008, do the applicable actions in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006; or Revision 4, dated September 18, 2008. After the effective date of this AD, use only Revision 4.

(2) Where paragraph 2.C.(1)(c) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008, specifies to change the maintenance program to indicate that repetitive inspections of the lightning and static bonding jumpers must be done in accordance with Lockheed Service Bulletin 382–28–21, instead do the repetitive inspections in accordance with Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006; or Revision 4, dated September 18, 2008. After the effective date of this AD, use only Revision 4.

(3) Where Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008, specifies to inspect, this AD requires doing a general visual inspection.

Note 2: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands,

ladders, or platforms may be required to gain proximity to the area being checked.''

Fuel System Modifications, Initial Inspections, and Repair if Necessary

(h) Within 36 months after November 3, 2008 (the effective date of AD 2008–20–01), do the applicable actions specified in table 1 of this AD, and repair any discrepancy before further flight, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.

TABLE 1—MODIFICATIONS AND INITIAL INSPECTIONS

Action	Additional source of guidance for accomplishing the action
For airplanes having any serial number prior to 4962: Install new, improved fuel dump masts in accordance with paragraph 2.C.(1)(d) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Lockheed Service Bulletin 382–28–9, dated May 13, 1983.
Mark the fuel quantity indicating system (FQIS) wires in accordance with paragraphs 2.C.(1)(a)*2,* 2.C.(4)(b), and 2.C.(4)(c) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Lockheed Service Bulletin 382–28–19, Revision 4, dated September 18, 2008.
Do the dry bay zonal inspection and inspect the static ground terminals of the fuel system plumbing in accordance with paragraph 2.C.(1)(a) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Lockheed Service Bulletin 382–28–19, Revision 4, dated September 18, 2008.
Install ground fault interrupters (GFIs) and flame arrestors for protection of the fuel system in accordance with paragraphs 2.C.(1)(b) and 2.C.(7)(c) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Lockheed Service Bulletin 382–28–20, Revision 11, dated April 20, 2010.
Inspect the GFIs for protection of the fuel system in accordance with paragraph 2.C.(1)(b)*1* of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Paragraph 2.C.(2) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.
Install the lightning bonding jumpers (straps) in accordance with paragraphs 2.C.(1)(c) and 2.C.(6)(a) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Lockheed Service Bulletin 382–28–21, Revision 4, dated January 6, 2010.
Inspect the lightning and static bonding jumpers (straps) in accordance with paragraphs 2.C.(1)(c) of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Lockheed Service Bulletin 382–28–19, Revision 4, dated September 18, 2008.
Apply a certain sealant to the interior of the main wing fuel tanks; and apply a certain sealant to the all external fuel tank nose caps, mid sections, and tail sections; as applicable; in accordance with paragraphs 2.C.(1)(e)*1,* 2.C.(1)(e)*3,* and 2.C.(7)(i)*1* of the Accomplishment Instructions of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008.	Lockheed Service Bulletin 382–28–24, Revision 1, dated November 5, 2007, including the Errata Notice, dated January 7, 2008.

No Alternative Inspections, Inspection Intervals, or CDCCLs

(i) After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (o) of this AD.

No Reporting Requirement

(j) Although Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006, specifies to notify Lockheed of any discrepancies found during inspection, this AD does not require that action.

NEW REQUIREMENTS OF THIS AD:

Incorrect Steps in a Service Bulletin

(k) Where the last two bulleted steps of paragraphs 2.C.(2)(b)*5* and 2.C.(2)(c)*3* of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008, specify that the GFI FAILURE and GROUND FAULT DETECTED lights illuminate for 2 seconds, this AD does not require those steps.

Additional Inspection Area

(l) For airplanes on which Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006, has not been done: Where table 1 of this AD specifies to do the dry bay zonal inspection, do an inspection of the fuel probes as part of the dry bay zonal inspections, in accordance with the service information specified in paragraph (h) of this AD for the dry bay zonal inspections. Do the inspections at the time specified in paragraph (h) of this AD, or within 9 months after the effective date of this AD, whichever occurs later.

Actions for Airplanes on Which a Previous Issue of Lockheed Service Bulletin 382–28–19 Was Done

(m) For airplanes on which any action was done in accordance with Lockheed Service Bulletin 382–28–19, Revision 3, dated November 30, 2006: Within the compliance time specified in paragraph (h) of this AD, or within 9 months after the effective date of this AD, whichever occurs later, do the actions required by paragraphs (m)(1) through (m)(4) of this AD and repair any discrepancy before further flight, in accordance with Accomplishment Instructions of Lockheed Service Bulletin 382–28–19, Revision 4, dated September 18, 2008. Although Lockheed Service Bulletin 382–28–19, Revision 4, dated September 18, 2008, specifies to notify Lockheed of any discrepancies found during inspection, this AD does not require that action.

(1) Inspect the fuel probes as part of the zonal inspections of the dry bay areas and other areas.

(2) Inspect generator feeder and control wire bundles for correct separation from other wires in the wing leading edge and fuselage areas, and for correct separation from fuel tank boundaries in the wing leading edge area.

(3) Inspect for correct spot-tying of certain wire bundles that are within 2 to 12 inches of hot equipment or wires with flame-resistant lacing braid, or, for wiring in powerplant areas, with fiberglass braid.

(4) Inspect for use of the correct shielding specification and separation of the FQIS wiring in certain locations from alternating current (AC) power wires.

Credit for Actions Accomplished in Accordance With Previous Service Information

(n) Actions done before the effective date of this AD in accordance with Lockheed

Service Bulletin 382–28–20, Revision 8, dated October 13, 2009; Revision 9, dated December 14, 2009; or Revision 10, dated March 18, 2010; are acceptable for compliance with the requirements of paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Atlanta 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.

(3) AMOCs approved for AD 2008–20–01 are approved as AMOCs for this AD.

Related Information

(p) For more information about this AD, contact Neil Duggan, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5576; fax: (404) 474–5606; e-mail: *neil.duggan@faa.gov.*

Material Incorporated by Reference

(q) You must use Lockheed Service Bulletin 382–28–19, Revision 4, dated September 18, 2008; or Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Lockheed Service Bulletin 382–28–19, Revision 4, dated September 18, 2008, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Lockheed Service Bulletin 382–28–22, Revision 3, dated March 28, 2008, on November 3, 2008 (73 FR 56464, September 29, 2008).

(3) For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, Georgia 30063; telephone 770–494–5444; fax 770–494–5445; e-mail *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.*

(4) You may review copies of the service information at the FAA, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on July 1, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–17399 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0217; Directorate Identifier 2010–NM–165–AD; Amendment 39–16748; AD 2011–15–01]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires a detailed inspection to detect distress and existing repairs to the leading edge structure of the vertical stabilizer at the splice at Station Zfs = 52.267; repetitive inspections for cracking in the front spar cap forward flanges of the vertical stabilizer, and either the aft flanges or side skins; repetitive inspections for loose and missing fasteners; and related investigative and corrective actions if necessary. This AD was prompted by reports of cracked vertical stabilizer skin, a severed front spar cap, elongated fastener holes at the leading edge of the vertical stabilizer, and a cracked front spar web and front spar cap bolt holes in the vertical stabilizer. We are issuing this AD to detect and correct such cracking damage, which could result in the structure being unable to support limit load, and could lead to the loss of the vertical stabilizer.

DATES: This AD is effective August 19, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 19, 2011.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5233; fax: 562–627–5210; e-mail: *Roger.Durbin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on March 14, 2011 (76 FR 13543). That NPRM proposed to require a detailed inspection to detect distress and existing repairs to the leading edge structure of the vertical stabilizer at the splice at Station Zfs = 52.267; repetitive inspections for cracking in the front spar cap forward flanges of the vertical stabilizer, and either the aft flanges or side skins; repetitive inspections for loose and missing fasteners; and related investigative and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Support for the Proposed AD

Boeing stated that it agrees with the NPRM.

Request To Change Heading for Paragraph (h) of the NPRM

American Airlines (American) stated that the heading of ''Repetitive Inspections for Cracks, and Related Investigative and Corrective Actions'' prior to paragraph (h) of the NPRM should not include ''repetitive'' because paragraph (h) of the NPRM only address initial inspections. From these statements, we infer that American wants us to remove ''repetitive'' from the heading preceding paragraph (h) of the NPRM.

We disagree. The heading applies to all paragraphs following the heading until the next header. Paragraph (h)(2) of this AD requires repetitive inspections if no crack is detected by the initial inspection. We have not changed the AD in this regard.

Request To Match Actions Proposed in NPRM to Actions in Service Information

American stated that Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010, in paragraph 4 and 5 of the Accomplishment Instructions, recommends repetitive inspections of the leading edge and spar cap structure, and that only paragraph (j) of the NPRM requires repetitive inspections and then only for the leading edge structure under some conditions. We infer that American wants us to change the AD to match Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010.

We disagree with revising the AD. In addition to paragraph (j), paragraph (h)(2) of this AD requires repetitive inspections for cracks of the left and right vertical stabilizer front spar cap if no crack is detected by the initial inspection, which is consistent with the service information and results in the AD and service information having consistent requirements. We have not changed the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 668 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for existing repairs, distress	10 work-hours × $85 per hour = $850	$0	$850	$567,800.
Repetitive inspections for cracking and loose and missing fasteners.	7 work-hours × $85 per hour = $595 per inspection cycle.	$0	$595 per inspection cycle.	$397,460 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

2011–15–01 The Boeing Company: Amendment 39–16748; Docket No. FAA–2011–0217; Directorate Identifier 2010–NM–165–AD.

Effective Date

(a) This AD is effective August 19, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010.

Subject

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

Unsafe Condition

(e) This AD was prompted by reports of cracked vertical stabilizer skin, a severed front spar cap, elongated fastener holes at the leading edge of the vertical stabilizer, and a cracked front spar web and front spar cap bolt holes in the vertical stabilizer. We are issuing this AD to detect and correct such cracking damage, which could result in the structure being unable to support limit load,

and could lead to the loss of the vertical stabilizer.

Compliance

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

Inspections

(g) Within 4,500 flight cycles after the effective date of this AD, do a detailed inspection for distress in and existing repairs to the leading edge structure of the vertical stabilizer at the splice at Station Zfs=52.267, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010.

Repetitive Inspections for Cracks, and Related Investigative and Corrective Actions

(h) Before further flight after doing the inspection required by paragraph (g) of this AD, inspect for cracks of the left and right vertical stabilizer front spar cap, in accordance with either Option 1 or Option 2 as specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010. If any crack is found, before further flight, evaluate and verify to confirm all crack indications, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010.

(1) If any cracking is confirmed, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(2) If no cracking is confirmed, repeat the inspection thereafter at intervals not to exceed the applicable interval specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) If the most recent inspection was done using Option 1, the next inspection must be done within 4,400 flight cycles.

(ii) If the most recent inspection was done using Option 2, the next inspection must be done within 3,000 flight cycles.

Leading Edge Repair

(i) If leading edge distress is found during the detailed inspection required by paragraph (g) of this AD, before further flight and after accomplishing the inspection required by paragraph (h) of this AD, repair the leading edge, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010.

Inspection for Loose/Missing Fasteners

(j) For airplanes on which no cracking is confirmed during the initial inspection required by paragraph (h) of this AD: At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD, do a detailed inspection for indications of loose and missing fasteners, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010. If any loose or missing fastener is found, before further flight, repair the leading edge, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010.

(1) If the inspection required by paragraph (h) was done using Option 1, do the inspection required by paragraph (j) of this AD within 4,400 flight cycles after accomplishing the inspection required by paragraph (h) of this AD.

(2) If inspection required by paragraph (h) was done using Option 2, do the inspection required by paragraph (j) of this AD within 3,000 flight cycles after accomplishing the inspection required by paragraph (h) of this AD.

(k) For airplanes on which no cracking is confirmed during the most recent inspection required by paragraph (h) of this AD: Repeat the inspection for loose and missing fasteners required by paragraph (j) of this AD thereafter at intervals not to exceed the applicable time specified in paragraph (k)(1) or (k)(2) of this AD.

(1) If the most recent inspection required by paragraph (h) was done using Option 1, the next inspection required by paragraph (j) of this AD must be done within 4,400 flight cycles after accomplishing the most recent inspection required by paragraph (j) of this AD.

(2) If the most recent inspection required by paragraph (h) was done using Option 2, the next inspection required by paragraph (j) of this AD must be done within 3,000 flight cycles after the most recent inspection required by paragraph (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Los Angeles 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

Related Information

(m) For more information about this AD, contact Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5233; fax: 562–627–5210; e-mail: *Roger.Durbin@faa.gov.*

Material Incorporated by Reference

(n) You must use Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on July 1, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–17400 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1307; Directorate Identifier 2010–NM–049–AD; Amendment 39–16671; AD 2011–09–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During flight-testing of a wing anti-ice piccolo tube containing a deliberate small breach, it was determined that the wing leading edge thermal switches were not detecting the consequent bleed leak at the design threshold. As a result, new

Airworthiness Limitation tasks, consisting of a functional test of the wing leading edge thermal switches and an inspection of the wing anti-ice duct piccolo tubes, have been introduced in order to limit exposure to dormant failure of the switches in the event of piccolo tube failure, which could potentially compromise the structural integrity of the wing leading edge and the effectiveness of the wing anti-ice system.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective August 19, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 19, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 5, 2011 (76 FR 477). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During flight-testing of a wing anti-ice piccolo tube containing a deliberate small breach, it was determined that the wing leading edge thermal switches were not detecting the consequent bleed leak at the design threshold. As a result, new Airworthiness Limitation tasks, consisting of a functional test of the wing leading edge thermal switches and an inspection of the wing anti-ice duct piccolo tubes, have been introduced in order to limit exposure to dormant failure of the switches in the event of piccolo tube failure, which could potentially compromise the structural integrity of the wing leading edge and the effectiveness of the wing anti-ice system. This directive mandates the revision of the approved maintenance schedule to include these new tasks, including phase-in schedules.

This revision clarifies the applicability of the directive for CL–600–2A12 aircraft, serial numbers 3001 through 3066, and for CL–600–2B16 aircraft, serial numbers 5001 through 5194. The directive is only applicable to these aircraft if Bombardier Service Bulletin (SB) 601–0590 [Scheduled Maintenance Instructions (MSG–3) Derived—Qualification] has been incorporated. There is no change required to the approved maintenance schedule if SB 601–0590 has not been incorporated.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 103 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $8,755, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–09–09 Bombardier, Inc.: Amendment 39–16671. Docket No. FAA–2010–1307; Directorate Identifier 2010–NM–049–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 19, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD; certificated in any category.

(1) Bombardier, Inc. Model CL–600–2A12 (CL–601) airplanes, serial numbers 3001 through 3066 inclusive on which Bombardier Service Bulletin 601–0590 has been accomplished.

(2) Bombardier, Inc. CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes, serial numbers 5001 through 5194 inclusive on which Bombardier Service Bulletin 601–0590 has been accomplished.

(3) Bombardier, Inc. CL–600–2B16 (CL–604 Variants) airplanes, serial numbers 5301 through 5665 inclusive.

(4) Bombardier, Inc. CL–600–2B16 (CL–604 Variants) airplanes, serial numbers 5701 and subsequent.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Codes 30 and 36: Ice and Rain Protection and Pneumatic, respectively.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During flight-testing of a wing anti-ice piccolo tube containing a deliberate small breach, it was determined that the wing leading edge thermal switches were not detecting the consequent bleed leak at the design threshold. As a result, new Airworthiness Limitation tasks, consisting of a functional test of the wing leading edge thermal switches and an inspection of the wing anti-ice duct piccolo tubes, have been introduced in order to limit exposure to dormant failure of the switches in the event of piccolo tube failure, which could potentially compromise the structural integrity of the wing leading edge and the effectiveness of the wing anti-ice system.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 30 days after the effective date of this AD: Revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness by incorporating the applicable tasks identified in table 1 of this AD.

TABLE 1—AIRWORTHINESS LIMITATIONS TASKS

For Bombardier, Inc. model—	Incorporate task(s)—	Identified in—
CL-600-2A12 (CL-601) airplanes, serial numbers 3001 through 3066 inclusive on which Bombardier Service Bulletin 601-0590 has been accomplished.	30–11–00–101, Wing Anti-icing, and 30–11–00–102, Wing Anti-icing.	Bombardier Challenger 601 Time Limits/Maintenance Checks, PSP 601–5, Revision 38, dated June 19, 2009.
CL-600-2B16 (CL-601-3A and CL-601-3R Variants) airplanes, serial numbers 5001 through 5194 inclusive on which Bombardier Service Bulletin 601–0590 has been accomplished.	30–11–00–101, Wing Anti-icing, and 30–11–00–102, Wing Anti-icing.	Bombardier Challenger 601 Time Limits/Maintenance Checks, PSP 601A–5, Revision 34, dated June 19, 2009.
CL–600–2B16 (CL–604 Variants) airplanes, serial numbers 5301 through 5665 inclusive.	30–11–00–101, Detailed Inspection of the Wing Anti-Ice Duct Piccolo-Tube, and 36-21-00-101, Functional Test of the Leading Edge Thermal Switches.	Bombardier Challenger 604 Time Limits/Maintenance Checks, CH 604 TLMC, Revision 13, dated August 12, 2009.
CL–600–2B16 (CL–604 Variants) airplanes, serial numbers 5701 and subsequent.	30–11–00–101, Detailed Inspection of the Wing Anti-Ice Duct Piccolo-Tube, and 36-21-00-101, Functional Test of the Leading Edge Thermal Switches.	Bombardier Challenger 605 Time Limits/Maintenance Checks, CH 605 TLMC, Revision 1, dated August 12, 2009.

(h) For all tasks identified in paragraph (g) of this AD, the initial compliance times for those tasks are within the applicable times specified in table 2 of this AD.

TABLE 2—INITIAL COMPLIANCE TIMES FOR AIRWORTHINESS LIMITATIONS TASKS

Bombardier, Inc. model—	Task(s)—	Initial compliance time (whichever occurs later)—	
CL-600-2A12 (CL-601) airplanes, serial numbers 3001 through 3066 inclusive; and CL-600-2B16 (CL-601-3A and CL-601-3R Variants) airplanes, serial numbers 5001 through 5194 inclusive; on which Bombardier Service Bulletin 601–0590 has been accomplished.	30–11–00–101, Wing Anti-icing ...	Prior to the accumulation of 4,800 total flight hours; or within 4,800 flight hours after accomplishing Task 30-11-06-204 in Section 5-20–15 of the applicable Time Limits/Maintenance Checks manual specified in table 1 of this AD; whichever occurs later.	Within 240 flight hours after the effective date of this AD.

TABLE 2—INITIAL COMPLIANCE TIMES FOR AIRWORTHINESS LIMITATIONS TASKS—Continued

Bombardier, Inc. model—	Task(s)—	Initial compliance time (whichever occurs later)—	
CL-600-2A12 (CL-601) airplanes, serial numbers 3001 through 3066 inclusive; and CL-600-2B16 (CL-601-3A and CL-601-3R Variants) airplanes, serial numbers 5001 through 5194 inclusive; on which Bombardier Service Bulletin 601–0590 has been accomplished.	30–11–00–102, Wing Anti-icing ...	Prior to the accumulation of 4,800 total flight hours; or within 4,800 flight hours after accomplishing Task 30-13-00-205 in Section 5-20–15 of the applicable Time Limits/Maintenance Checks manual specified in table 1 of this AD; whichever occurs later.	Within 240 flight hours after the effective date of this AD.
CL–600–2B16 (CL–604 Variants) airplanes, serial numbers 5301 through 5665 inclusive.	30–11–00–101, Detailed Inspection of the Wing Anti-Ice Duct Piccolo-Tube, and 36-21-00-101, Functional Test of the Leading Edge Thermal Switches.	Prior to the accumulation of 6,400 total flight hours; except for airplanes having 6,400 total flight hours or more as of the effective date of this AD on which the task has not been accomplished: prior to the next scheduled 6,400 flight hour task inspection or prior to the next scheduled accomplishment of Task 57-10-00–208 in the applicable Time Limits/Maintenance Checks manual specified in table 1 of this AD, whichever occurs first.	Within 320 flight hours after the effective date of this AD.
CL–600–2B16 (CL–604 Variants) airplanes, serial numbers 5701 and subsequent.	30–11–00–101, Detailed Inspection of the Wing Anti-Ice Duct Piccolo-Tube, and 36-21-00-101, Functional Test of the Leading Edge Thermal Switches.	Prior to the accumulation of 6,400 total flight hours.	Within 320 flight hours after the effective date of this AD.

(i) After accomplishing the actions required by paragraph (g) of this AD, no alternative tasks or task intervals may be used unless the tasks or task intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(j) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(k) Refer to MCAI Canadian Airworthiness Directive CF–2009–49R1, dated January 21, 2010, and the service information specified in Table 1 of this AD, for related information.

Material Incorporated by Reference

(l) You must use the applicable service information contained in table 3 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Tasks 30–11–00–101, Wing Anti-icing, and 30–11–00–102, Wing Anti-icing, of the Bombardier Challenger 601 Time Limits/Maintenance Checks, PSP 601–5.	38	June 19, 2009.
Tasks 30–11–00–101, Wing Anti-icing, and 30–11–00–102, Wing Anti-icing, of the Bombardier Challenger 601 Time Limits/Maintenance Checks, PSP 601A–5.	34	June 19, 2009.
Tasks 30–11–00–101, Detailed Inspection of the Wing Anti-Ice Duct Piccolo-Tube, and 36–21–00–101, Functional Test of the Leading Edge Thermal Switches, of the Bombardier Challenger 604 Time Limits/Maintenance Checks, CH 604 TLMC.	13	August 12, 2009.
Tasks 30–11–00–101, Detailed Inspection of the Wing Anti-Ice Duct Piccolo-Tube, and 36–21–00–101, Functional Test of the Leading Edge Thermal Switches, of the Bombardier Challenger 605 Time Limits/Maintenance Checks, CH 605 TLMC.	1	August 12, 2009.

The title pages of these documents do not indicate the revision level or issue date of the documents. Only the Record of Revisions of these documents contains the revision level of these documents.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on April 13, 2011.

Ali Bahrami,

Manager,Transport Airplane Directorate,Aircraft Certification Service.

[FR Doc. 2011–17402 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0653; Directorate Identifier 2010–NM–249–AD; Amendment 39–16745; AD 2011–14–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–342 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

* * * * *

Following a query from an operator, investigations revealed that some MSN [manufacturer serial number], for which Airbus modification 40391 was indicated as fully embodied inside the Aircraft Inspection Report (AIR), did not have Modification Proposal (MP–S10437) which is part of this modification embodied in production.

As a result, ALI [Airworthiness Limitation Item] task 533105–01–02 has not been performed on the MSN listed in the applicability section of this AD, which constitutes an unsafe condition.

* * * * *

The unsafe condition is fatigue cracking of the internal structure of the fuselage, which could adversely affect the structural integrity of the airplane. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective August 1, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 1, 2011.

We must receive comments on this AD by August 29, 2011.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0173, dated August 17, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Airworthiness Limitation Item (ALI) task 533105–01–02 is applicable to aeroplanes on which Airbus modification 40391 has not been embodied in production. The requirements associated to this task are applicable to aeroplanes on which Modification Proposal (MP–S10437) has not been embodied.
>
> Following a query from an operator, investigations revealed that some MSN [manufacturer serial numbers], for which Airbus modification 40391 was indicated as fully embodied inside the Aircraft Inspection Report (AIR), did not have Modification Proposal (MP–S10437) which is part of this modification embodied in production.
>
> As a result, ALI task 533105–01–02 has not been performed on the MSN listed in the applicability section of this AD, which constitutes an unsafe condition.
>
> For the reasons described above, this AD requires repetitive special detailed inspections [for fatigue cracking of the internal structure of the fuselage] corresponding to ALI task 533105–01–02 and the accomplishment of the associated corrective actions.

The unsafe condition is fatigue cracking of the internal structure of the fuselage, which could adversely affect the structural integrity of the airplane. The special detailed inspection is defined as an ultrasonic inspection in this AD. The corrective action is repairing any cracks in accordance with a method approved by the FAA or EASA (or its delegated agent). You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A330–53–3185, including Appendices 01 and 02, dated May 20, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this

AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0653; Directorate Identifier 2010–NM–249–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–14–10 Airbus: Amendment 39–16745. Docket No. FAA–2011–0653; Directorate Identifier 2010–NM–249–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 1, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–342 airplanes, manufacturer serial numbers (MSN) 0012 and 0017; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

* * * * *

Following a query from an operator, investigations revealed that some MSN, for which Airbus modification 40391 was indicated as fully embodied inside the Aircraft Inspection Report (AIR), did not have Modification Proposal (MP–S10437) which is part of this modification embodied in production.

As a result, ALI [Airworthiness Limitation Item] task 533105–01–02 has not been performed on the MSN listed in the applicability section of this AD, which constitutes an unsafe condition.

* * * * *

The unsafe condition is fatigue cracking of the internal structure of the fuselage, which could adversely affect the structural integrity of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within the applicable time specified in table 1 of this AD, or within 90 days after the effective date of this AD, whichever occurs later: Do an ultrasonic inspection for cracks on the left hand side and right hand side of fuselage frame 39.1 at the fastener hole area just above stringer 28, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–53–3185, dated May 20, 2010. If any crack is found during any inspection required by this AD, before further flight repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

TABLE 1—COMPLIANCE TIMES

MSN—	Initial compliance time—
0012	Before the accumulation of 16,200 total flight cycles, or 38,900 total flight hours, whichever occurs first.
0017	Before the accumulation of 16,200 total flight cycles, or within 38,000 total flight hours, whichever occurs first.

(h) If no crack is found during the inspection required by paragraph (g) of this AD, repeat the inspection in paragraph (g) of this AD thereafter at intervals not to exceed 7,400 flight cycles or 22,300 flight hours, whichever occurs first.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(i) The following provisions also apply to this AD:

(1) **Alternative Methods of Compliance (AMOCs):** The Manager, International Branch, ANM–116, 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 International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) **Airworthy Product:** For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(j) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0173, dated August 17, 2010; and Airbus Mandatory Service Bulletin A330–53–3185, dated May 20, 2010; for related information.

Material Incorporated by Reference

(k) You must use Airbus Mandatory Service Bulletin A330–53–3185, excluding Appendix 01 and including Appendix 02, all dated May 20, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on July 1, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–17403 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1158; Directorate Identifier 2010–NM–125–AD; Amendment 39–16750; AD 2011–15–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) that applies to the products listed above. That AD currently requires repetitive inspections to detect damage of the sleeving and wire bundles of the boost pumps of the numbers 1 and 4 main fuel tanks, and of the auxiliary tank jettison pumps (if installed); replacement of any damaged sleeving with new sleeving; and repair or replacement of any damaged wires with new wires. For airplanes on which any burned wires are found, that AD also requires an inspection to detect damage of the conduit, and replacement of any damaged conduit with a serviceable conduit. This new AD reduces the initial compliance time and repetitive inspection interval in the existing AD. This AD was prompted by fleet information indicating that the repetitive inspection interval in the existing AD is too long because excessive chafing of the sleeving continues to occur much earlier than expected between scheduled inspections. We are issuing this AD to detect and correct abrasion of the Teflon sleeving and wires in the bundles of the fuel boost pumps for the numbers 1 and 4 main fuel tanks and of the auxiliary tank jettison pumps (if installed), which could result in electrical arcing between the wires and aluminum conduit and consequent fire or explosion of the fuel tank.

DATES: This AD is effective August 19, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 19, 2011.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200

New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede an airworthiness directive (AD) 97–26–07, Amendment 39–10250 (62 FR 65352, December 12, 1997). That AD applies to the specified products. The NPRM published in the **Federal Register** on December 14, 2010 (75 FR 77793). That NPRM proposed to continue to require repetitive inspections to detect damage of the sleeving and wire bundles of the boost pumps of the numbers 1 and 4 main fuel tanks, and of the auxiliary tank jettison pumps (if installed); replacement of any damaged sleeving with new sleeving; and repair or replacement of any damaged wires with new wires. For airplanes on which any burned wires are found, that NPRM also proposed to continue to require an inspection to detect damage of the conduit, and replacement of any damaged conduit with a serviceable conduit. That NPRM proposed to reduce the initial compliance time and repetitive inspection interval in the existing AD.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request To Change Heading for Restated Requirements

United Airlines (UA) asked that we change the heading titled ''Restatement of Requirements of AD 96–26–06, Amendment 39–9870,'' which precedes paragraph (g) of the NPRM, to ''Restatement of Requirements of AD 97–26–07, Amendment 39–10250. UA pointed out that AD 97–26–07 superseded AD 96–26–06.

We agree with UA for the reason provided. Although certain requirements in AD 96–26–06 are carried over in AD 97–26–07—and in this AD—those requirements are identified by the AD number within the applicable paragraphs. We have changed the heading preceding paragraph (g) of this AD accordingly.

Request To Add Approved Alternate Method of Compliance

UA asked that Boeing Alert Service Bulletin 747–28A2204, Revision 2, dated September 1, 2005, be included in paragraphs (g), (i), (j), and (k) of the NPRM. UA stated that Boeing Alert Service Bulletin 747–28A2204, Revision 2, dated September 1, 2005, was approved as an alternative method of compliance (AMOC) to the requirements of paragraph (a) of AD 97–26–07.

We partially agree with UA. We agree that Revision 2, dated September 1, 2005, of Boeing Alert Service Bulletin 747–28A2204, was reviewed by the FAA, and approved as an AMOC to the requirements of paragraph (a) of AD 97–26–07. We do not agree that Boeing Alert Service Bulletin 747–28A2204, Revision 2, dated September 1, 2005, should be added to the requested paragraphs because those paragraphs are part of the restatement of the requirements of AD 97–26–07. However, we have added a new paragraph (p) to this AD (and reidentified subsequent paragraphs) to give operators credit for using Boeing Alert Service Bulletin 747–28A2204, Revision 2, dated September 1, 2005, to accomplish the specified actions.

Request To Include Terminating Action

UA asked that terminating action be included in the NPRM. UA stated that it believes Boeing is developing a solution that would terminate the inspections required by the NPRM.

We acknowledge the comment from UA. However, Boeing has not submitted a revised service bulletin with terminating action for the repetitive inspections. We are aware that Boeing is developing a solution to the wire chafing issue, but until a modification is approved and available we are unable to reference it in the AD. However, under the provisions of paragraph (q) of this AD, we will consider requests for accomplishing a terminating modification if data are submitted to substantiate that it would provide an acceptable level of safety. We have made no change to the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 215 airplanes of U.S. registry. The new requirements of this AD add no additional economic burden. The current costs for this AD are repeated below for the convenience of affected operators.

The actions that are required by AD 97–26–07 and retained in this AD take about 4 work-hours per airplane, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $73,100, or $340 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 97–26–07, Amendment 39–10250 (62 FR 65352, December 12, 1997), and adding the following new AD:

2011–15–03 The Boeing Company: Amendment 39–16750; Docket No. FAA–2010–1158; Directorate Identifier 2010–NM–125–AD.

Effective Date

(a) This AD is effective August 19, 2011.

Affected ADs

(b) This AD supersedes AD 97–26–07, Amendment 39–10250.

Applicability

(c) This AD applies to all The Boeing Company Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, –400F, 747SR, and 747SP series airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD was prompted by fleet information indicating that the repetitive inspection interval in the existing AD is too long because excessive chafing of the sleeving continues to occur much earlier than expected between scheduled inspections. The Federal Aviation Administration is issuing this AD to detect and correct abrasion of the Teflon sleeving and wires in the bundles of the fuel boost pumps for the numbers 1 and 4 main fuel tanks and of the auxiliary tank jettison pumps (if installed), which could result in electrical arcing between the wires and aluminum conduit and consequent fire or explosion of the fuel tank.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 97–26–07, Amendment 39–10250

Inspections/Repair or Replace if Necessary

(g) Perform an initial inspection to detect damage of the sleeving and wire bundles of the forward and aft boost pumps of the numbers 1 and 4 main fuel tanks, and of the wire bundles of the auxiliary tank jettison pumps (if installed), in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996; Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997; or Boeing Alert Service Bulletin 747–28A2204, Revision 3, dated March 11, 2010; at the time specified in paragraph (g)(1) or (g)(2) of this AD, as applicable. After the effective date of this AD, only Revision 3 of Boeing Alert Service Bulletin 747–28A2204 may be used.

(1) For airplanes having line numbers 001 through 432 inclusive: Inspect within 120 days after January 21, 1997 (the effective date of AD 96–26–06, amendment 39–9870, which was superseded by AD 97–26–07).

(2) For airplanes having line numbers 433 and subsequent: Inspect at the later of the times specified in paragraphs (g)(2)(i) or (g)(2)(ii) of this AD.

(i) Prior to the accumulation of 20,000 flight cycles or 60,000 flight hours, whichever occurs first; or

(ii) Within 120 days after December 29, 1997 (the effective date of AD 97–26–07).

(h) Repeat the inspection required by paragraph (g) of this AD at intervals not to exceed 20,000 flight cycles or 60,000 flight hours since the last inspection, whichever occurs first, until the first inspection required by paragraph (n) of this AD has been accomplished.

(i) If any damaged sleeving is found, prior to further flight, replace the sleeving with new sleeving, in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996; Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997; or Boeing Alert Service Bulletin 747–28A2204, Revision 3, dated March 11, 2010. After the effective date of this AD, only Revision 3 of Boeing Alert Service Bulletin 747–28A2204 may be used.

(j) If any damaged wire is found, prior to further flight, repair or replace the wire with a new wire, in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997; or Boeing Alert Service Bulletin 747–28A2204, Revision 3, dated March 11, 2010. After the effective date of this AD, only Revision 3 of Boeing Alert Service Bulletin 747–28A2204 may be used.

(k) If any burned wire is found, prior to further flight, perform an inspection to detect damage of the conduit, in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996; Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997; or Boeing Alert Service Bulletin 747–28A2204, Revision 3, dated March 11, 2010. If any damage is found, prior to further flight, replace the conduit with a serviceable conduit, in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996; Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997; or Boeing Alert Service Bulletin 747–28A2204, Revision 3, dated March 11, 2010. After the effective date of this AD, only Revision 3 of Boeing Alert Service Bulletin 747–28A2204 may be used.

(l) For airplanes having line numbers 433 and subsequent: Within 14 days after accomplishing the initial inspection required by paragraph (g) of this AD, submit a report of any damaged sleeving (i.e., holes, breaks, cuts, splits), damaged wire (i.e., worn or cracked insulation, exposed conductor, indication of arcing/burning), or damaged conduit to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98057–3356; fax (425) 227–1181. The report shall include the information specified in paragraphs (l)(1), (l)(2), (l)(3), (l)(4), and (l)(5) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) The airplane serial number.

(2) The total hours' time-in-service accumulated on the airplane.

(3) The total number of flight cycles accumulated on the airplane.

(4) A description of any damage found.

(5) The location of where the damaged part was installed.

(m) For airplanes having line numbers 433 and subsequent: Within 14 days after accomplishing the initial inspection required by paragraph (g) of this AD, submit any damaged part to the Manager, Seattle ACO. The damaged part shall be tagged to include the information specified in paragraphs (l)(1), (l)(2), (l)(3), (l)(4), and (l)(5) of this AD. Additionally, operators shall align the inner sleeving, outer sleeving, and wire as installed in the airplane, and secure the sleeving and wiring in place by taping or other means when submitting the damaged part to the Manager, Seattle ACO. Information collection requirements contained in this regulation have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

New Reduced Inspection Intervals

Repetitive Inspections

(n) Do the next inspection required by paragraph (h) of this AD at the time specified in paragraph (n)(1) or (n)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 747–28A2204, Revision 3, dated March 11, 2010. Repeat the inspection thereafter at intervals not to exceed 15,000 flight hours. Accomplishing the initial inspection in this paragraph ends the repetitive inspection requirements of paragraph (h) of this AD.

(1) For airplanes on which the inspection required by paragraph (g) of this AD has been done as of the effective date of this AD: Do the inspection at the earlier of the times specified in paragraph (n)(1)(i) and (n)(1)(ii) of this AD.

(i) Within 15,000 flight hours after the most recent inspection, or within 6,000 flight

hours after the effective date of this AD, whichever occurs later.

(ii) Within 20,000 flight cycles or 60,000 flight hours after the most recent inspection required by paragraph (g) or (h) of this AD, whichever occurs first.

(2) For airplanes on which the inspection required by paragraph (g) of this AD has not been done as of the effective date of this AD: Do the inspection before the accumulation of 15,000 total flight hours, or within 6,000 flight hours after the effective date of this AD, whichever occurs later.

Paperwork Reduction Act Burden Statement

(o) A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Credit for Actions Accomplished in Accordance With Previous Service Information

(p) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–28A2204, Revision 2, dated September 1, 2005, are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(q)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 ATTN: Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(3) AMOCs approved previously in accordance with AD 97–26–07, Amendment 39–10250, are approved as alternative methods of compliance with the corresponding requirements of this AD. Compliance time extensions approved previously in accordance with AD 97–26–07, are not approved as alternative methods of compliance for the compliance times required by paragraph (n) of this AD.

Material Incorporated by Reference

(r) You must use Boeing Alert Service Bulletin 747–28A2204, Revision 3, dated March 11, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–28A2204, Revision 3, dated March 11, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on July 1, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–17404 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0695; Directorate Identifier 2011–SW–001–AD; Amendment 39–16740; AD 2011–14–05]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model MD900 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for MD Helicopters, Inc. (MDHI) Model MD900 helicopters. That AD currently requires visually inspecting the main rotor lower hub assembly (lower hub) for a crack, and if you find a crack, before further flight, replacing the unairworthy lower hub with an airworthy lower hub. Additionally, within 10 days of finding a cracked lower hub, the existing AD requires reporting the finding to the Los Angeles Aircraft Certification Office (LAACO). That AD was prompted by two reports of cracks detected in the hub in the area near the flex beam bolt hole locations during maintenance on two MDHI Model MD900 helicopters. Since we issued that AD, we determined that one manufacturer had incorrectly inserted flanged bushings into the lower hub bore that resulted in local corrosion, leading to fatigue cracking. Examination of lower hubs from the other manufacturer shows correct bushing installation. Therefore, this amendment limits the applicability to the affected lower hubs; retains the visual inspection but at a different compliance time; adds an eddy current inspection; retains the requirement to replace a cracked lower hub with an airworthy lower hub before further flight; and removes the requirement to report to the LAACO. The actions specified by this AD are intended to detect a crack in the lower hub and prevent failure of the lower hub and subsequent loss of control of the helicopter.

DATES: This AD is effective August 1, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 1, 2011.

We must receive any comments on this AD by September 13, 2011.

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

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

For service information identified in this AD, contact MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, AZ 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or at *http://www.mdhelicopters.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Eric Schrieber, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5348, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

On August 19, 2010, we issued Emergency AD (EAD) 2010–18–51. That EAD was prompted by two reports of cracks detected in the lower hub near the flex beam bolt hole location during maintenance. That EAD required, within 4 hours time-in-service (TIS), visually inspecting the lower hub for a crack and, if you find a crack, before further flight, replacing the lower hub with an airworthy lower hub and, within 10 days, reporting a cracked lower hub to the LAACO. We superseded EAD 2010–18–51 with EAD 2010–18–52, issued August 23, 2010, upon discovering a typographical error in the ''Applicability'' section of the EAD in the lower hub part number (P/N). EAD 2010–18–52 contained the same requirements as EAD 2010–18–51 but corrected the P/N for the lower hub.

Actions Since That AD Was Issued

Since we issued the AD, 5 additional lower hubs were found cracked. We determined that one manufacturer of lower hubs with serial numbers (S/Ns) beginning with 5009 (*e.g.,* 5009–XXXX) had incorrectly inserted flanged bushings into the lower hub bore. This condition resulted in local corrosion leading to fatigue cracking. Examination of lower hubs from the other manufacturer shows correct bushing installation.

Relevant Service Information

We reviewed MDHI Service Bulletin SB900–117, dated January 14, 2011 (SB). The SB specifies an initial 100-hour and recurring 300-hour visual and eddy current inspections of the lower hub for a crack and, if there is a crack, replacing the lower hub with an airworthy lower hub. The inspections would be done at the stated intervals or at the next annual inspection, whichever occurs first. The SB also specifies replacing an affected lower hub within 3 years after the date of the SB.

FAA's Determination

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

AD Requirements

This AD requires a visual inspection, and if necessary, an eddy current inspection of the lower hub for a crack. If there is a crack, the AD requires replacing the lower hub with an airworthy lower hub. This AD requires accomplishing these actions by following specified portions of the service information described previously, except as discussed under ''Differences Between the AD and the Service Information.''

Change to Existing AD

This superseding AD changes the compliance time for the visual inspection and adds an eddy current inspection of the lower hub for a crack. This AD also removes the reporting requirement to the LAACO and the requirement for an OMB control number. This AD also reduces the applicability to only those helicopters with certain serial-numbered lower hubs installed.

Differences Between the AD and the Service Information

This AD does not require contacting the manufacturer or returning the lower hub assembly with a certain report. This AD also does not require the 300-hour inspection or replacing the lower hub within 3 years from the date of the SB because these actions do not fit our criteria for a Final rule, request for comments.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the previously described unsafe condition can adversely affect the structural integrity and controllability of the helicopter. The inspection is required within 100 hours TIS or during the annual inspection, whichever occurs first, unless done within the last 200 hours TIS. Since the affected helicopters could reach 100 hours TIS within 1 month, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–0695 and directorate identifier 2011–SW–001–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 12 helicopters of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work hour to visually inspect the hub.	1 work-hour x $85 per hour = $85.	N/A	$85	$1,020.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work hour to eddy current inspect the lower hub [new action].	1 work-hour x $85 per hour = $85.	N/A	$85	$1,020.
Required parts and labor to replace a lower hub.	11 work hours x 85 per hour = $935.	$12,480 per hub	$13,415	$160,980.
Total	$1,105	$12,480	$13,585	$163,020 assuming the lower hubs are replaced for the entire fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–18–52, Amendment 39–16515 (75 FR 69862, November 16, 2010) and adding the following new AD:

2011–14–05 MD HELICOPTERS, INC.: Amendment 39–16740; Docket No. FAA–2011–0695; Directorate Identifier 2011–SW–001–AD.

Effective Date

(a) This AD is effective August 1, 2011.

Affected ADs

(b) This AD supersedes AD 2010–18–52, Amendment 39–16515, Docket No. FAA–2010–1126; Directorate Identifier 2010–SW–078–AD.

Applicability

(c) Model MD900 helicopters with main rotor lower hub assembly (lower hub), part number (P/N) 900R2101008–107, serial numbers (S/Ns) that begin with 5009, certificated in any category.

Unsafe Condition

(d) This amendment is prompted by the determination that a certain manufacturer had incorrectly inserted the flanged bushings into the lower hub bore. The actions specified by this AD are intended to detect a crack in the lower hub and prevent failure of the hub and subsequent loss of control of the helicopter.

Compliance

(e) Within 100 hours time-in-service (TIS) or during the next annual inspection, whichever occurs first, unless done within the last 200 hours TIS:

(1) Visually inspect the sides and bottom of the area between the arms for the centering bearing and the areas adjacent to the bushings of the lower hub assembly for a crack. If there is a crack, before further flight, replace the lower hub with an airworthy lower hub.

(2) If the lower hub is not replaced as a result of the visual inspection required by paragraph (e)(1) of this AD, eddy current inspect the lower hub for a crack by following the Accomplishment Instructions, paragraphs 2.A(2) through 2.A.(10)., of MD Helicopters Inc. Service Bulletin SB900–117, dated January 14, 2011 (SB). If there is a crack, before further flight, replace the lower hub with an airworthy hub.

(f) The eddy current inspection required by paragraph (e)(2) of this AD must be done by a Level II technician with ASNT–TC–1A, CEN EN 4179, MIL–STD–410, NAS410, or equivalent certification in eddy current inspections. The technician must have done an eddy current inspection in the last 12 months.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles Aircraft Certification Office (LAACO), 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 LAACO, send it to the attention of the person identified in the Additional Information section of this AD.

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

Additional Information

(h) For more information about this AD, contact Eric Schrieber, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5348, fax (562) 627–5210.

Material Incorporated by Reference

(i)(1) Inspect the main rotor lower hub assembly for a crack by following the specified portions of MD Helicopter, Inc. Service Bulletin SB 900–117, dated January

14, 2011. The Director of the Federal Register approved the incorporation by reference of the service information, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, AZ 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or at *http://www.mdhelicopters.com.*

(3) Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Subject

(j) The Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code is 6220: Main Rotor Head.

Issued in Fort Worth, Texas, on June 21, 2011.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–17421 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0307; Directorate Identifier 2010–NM–111–AD; Amendment 39–16747; AD 2011–14–12]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model SAAB 2000 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A report has been received of an incident where one of the two bolts attaching the actuator mounting bracket to the MLG [main landing gear] Shock Strut was found loose, leading to failure of the other attachment bolt, subsequently resulting in failure of the bracket.

This condition, if not detected and corrected, could prevent the MLG to extend to the full down-and-locked position, possibly resulting in MLG collapse upon landing or during roll-out, with consequent damage to the aeroplane and injury to the occupants.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective August 19, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 1, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 8, 2011 (76 FR 19719). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A report has been received of an incident where one of the two bolts attaching the actuator mounting bracket to the MLG Shock Strut was found loose, leading to failure of the other attachment bolt, subsequently resulting in failure of the bracket.

This condition, if not detected and corrected, could prevent the MLG to extend to the full down-and-locked position, possibly resulting in MLG collapse upon landing or during roll-out, with consequent damage to the aeroplane and injury to the occupants.

To correct this potentially unsafe condition, SAAB has published Service Bulletin (SB) 2000–32–073, describing a [detailed] inspection of the attachment bolts [and nuts] to detect any loose bolts [and nuts], follow-up corrective action(s), depending on findings, and the installation of the correct number of washers.

For the reasons described above, this EASA AD requires the accomplishment of the actions described in SAAB SB 2000–32–073.

Required actions, if any loose parts are found, include replacing the bolt with a new bolt, and then doing a detailed inspection of the bolts for uniform or fretting corrosion; a detailed inspection of the actuator mounting bracket and shock struts for damage, cracks, and signs of corrosion; and doing corrective actions if necessary. Corrective actions include removing corrosion, replacing affected bolts with new bolts, tightening loose nuts, repairing, and installing the correct number of washers. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 8 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $1,039 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $8,992, or $1,124 per product.

In addition, we estimate that any necessary follow-on actions would take about 10 work-hours and require parts costing $1,039, for a cost of $1,889 per

product. We have no way of determining the number of products that may need these actions.

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–14–12 Saab AB, Saab Aerosystems: Amendment 39–16747. Docket No. FAA–2011–0307; Directorate Identifier 2010–NM–111–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 19, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Saab AB, Saab Aerosystems Model SAAB 2000 airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

A report has been received of an incident where one of the two bolts attaching the actuator mounting bracket to the MLG [main landing gear] Shock Strut was found loose, leading to failure of the other attachment bolt, subsequently resulting in failure of the bracket.

This condition, if not detected and corrected, could prevent the MLG to extend to the full down-and-locked position, possibly resulting in MLG collapse upon landing or during roll-out, with consequent damage to the aeroplane and injury to the occupants.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection

(g) Within 12 months after the effective date of this AD, do a detailed inspection for any loose top bolt and nut of the shock strut actuator mounting bracket of both the left-hand and right-hand main landing gear (MLG), in accordance with paragraph 2.B. of the Accomplishment Instructions of Saab Service Bulletin 2000–32–073, Revision 01, dated October 20, 2009.

Corrective Actions

(h) If any loose bolt or nut is found during the inspection required by paragraph (g) of this AD, before further flight, replace the bolt with a new bolt and accomplish paragraphs (h)(1) and (h)(2) of this AD, in accordance with paragraph 2.C. of the Accomplishment Instructions of Saab Service Bulletin 2000–32–073, Revision 01, dated October 20, 2009.

(1) Do a detailed inspection of the bottom bolts for uniform or fretting corrosion. If any corrosion is found, before further flight, accomplish all applicable corrective actions, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–32–073, Revision 01, dated October 20, 2009.

(2) Do a detailed inspection for damage, cracks, and other signs of deterioration of the actuator mounting bracket and shock strut. If signs of damage, cracks, or other signs of deterioration are found on the actuator mounting bracket or the shock strut, before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the European Aviation Safety Agency (EASA) (or its delegated agent).

(i) Within 12 months after the effective date of this AD, unless already accomplished in accordance with paragraph (h) of this AD, install the correct number of washers for both the top and bottom bolts of the shock strut actuator mounting bracket of both MLG, in accordance with paragraph 2.C. of the Accomplishment Instructions of Saab Service Bulletin 2000–32–073, Revision 01, dated October 20, 2009.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) Actions accomplished before the effective date of this AD in accordance with Saab Service Bulletin 2000–32–073, dated June 26, 2009, are considered acceptable for compliance with the corresponding actions specified in this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

No differences.

Other FAA AD Provisions

(k) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, 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 International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–

3356; telephone (425) 227–1112; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(l) Refer to MCAI EASA Airworthiness Directive 2010–0069, dated April 14, 2010; and Saab Service Bulletin 2000–32–073, Revision 01, dated October 20, 2009; for related information.

Material Incorporated by Reference

(m) You must use Saab Service Bulletin 2000–32–073, Revision 01, dated October 20, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Saab AB, Saab Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; e-mail *saab2000.techsupport@saabgroup.com;* Internet *http://www.saabgroup.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on July 1, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–17576 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0436; Directorate Identifier 2011–CE–009–AD; Amendment 39–16752; AD 2011–15–05]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation Models B300 and B300C (C–12W) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation Models B300 and B300C (C–12W) airplanes. This AD was prompted by an error found in the take-off speeds and field lengths published in the FAA-approved airplane flight manual. This AD requires a correction to the published data in the airplane flight manual and the pilot's operating handbook to ensure it corresponds with the published data in the pilot's checklist. This condition, if not corrected, could result in a pilot taking off from shorter runways than required by the airplane if the airplane loses an engine after takeoff decision speed (V_1). This could result in the airplane running out of runway before take-off can be accomplished. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective August 19, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 19, 2011.

ADDRESSES: For service information identified in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67201; telephone: (316) 676–5034; fax: (316) 676–6614; Internet: *https:// www.hawkerbeechcraft.com/ service_support/pubs/*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on April 29, 2011 (76 FR 23921). That NPRM proposed to require inserting an update to the performance charts in the FAA-approved Airplane Flight Manual and the Pilot's Operating Handbook, part number (P/N) 130–590031–245. The required runway distances published in the current manual could be up to 320 feet shorter than what is necessary. Hawker Beechcraft Corporation determined data in the pilot's checklist (P/N 130–590031–273) was correct. This condition, if not corrected, could result in taking off from shorter runways than required by the airplane if the airplane loses an engine after takeoff decision speed (V_1). This could result in the airplane running out of runway before take-off can be accomplished.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this proposed AD affects 46 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
AFM page replacement	0.5 work-hour × $85 per hour = $42.50.	Not applicable	$42.50	$1,955

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

2011–15–05 Hawker Beechcraft Corporation Models B300 and B300C (C–12W) Airplanes: Amendment 39–16752; Docket No. FAA–2011–0436; Directorate Identifier 2011–CE–009–AD.

(a) Effective Date

This AD is effective August 19, 2011.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to Hawker Beechcraft Corporation Models B300 and B300C (C–12W) airplanes, all serial numbers, that:

(2) Are certificated in any category; and

(3) Are modified per Hawker Beechcraft Drawing 130M000030 or Kit Drawing 130–4014 that incorporate Pilot's Operating Handbook and FAA Approved Flight Manual, part number (P/N) 130–590031–245.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 91, Charts.

(e) Unsafe Condition

This AD was prompted by an error that was discovered in the take-off speeds and field lengths published in the FAA-approved flight manual. This AD is issued to correct the published data in the airplane flight manual and the pilot's operating handbook and ensure it corresponds with the published data in the pilot's checklist. This condition, if not corrected, could result in taking off from shorter runways than required by the airplane if the airplane loses an engine after takeoff decision speed (V_1). This could result in the airplane running out of runway before take-off can be accomplished.

(f) Compliance

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

(g) Action

Within 14 days after the effective date of this AD, insert Hawker Beechcraft Corporation Log of Temporary Changes, dated February 2011; and Hawker Beechcraft Corporation Temporary Change to the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual, Part Number (P/N) 130–590031–245TC5, dated February 2011; into the airplane's Pilot's Operating Handbook and FAA Approved Flight Manual, P/N 130–590031–245. The actions required by this paragraph may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9 (a)(1)–(4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Alternative Methods of Compliance (AMOCs)

(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.

(i) Related Information

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

(j) Material Incorporated by Reference

You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(1) Hawker Beechcraft Corporation Log of Temporary Changes, dated February 2011, approved for IBR August 19, 2011.

(2) Hawker Beechcraft Corporation Temporary Change to the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual, P/N 130–590031–245TC5, dated February 2011, approved for IBR August 19, 2011.

(3) For service information identified in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67201; telephone: (316) 676–5034; fax: (316) 676–6614; Internet: *https://www.hawkerbeechcraft.com/service_support/pubs/.*

(4) You may review copies of the service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on July 7, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–17567 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0139; Directorate Identifier 2010–CE–057–AD; Amendment 39–16743; AD 2011–14–08]

RIN 2120–AA64

Airworthiness Directives; B/E Aerospace, Continuous Flow Passenger Oxygen Mask Assembly, Part Numbers 174006–( ), 174080–( ), 174085–( ), 174095–( ), 174097–( ), and 174098–( )

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above, except for those that are currently affected by similar action through any of five ADs applicable to Boeing products. This AD requires an inspection/records check to determine the manufacturer and part number of the oxygen mask assemblies installed, an inspection to determine the manufacturing date and modification status if certain oxygen mask assemblies are installed, and corrective action for certain oxygen mask assemblies. This AD was prompted by a report that several oxygen mask assemblies with broken in-line flow indicators were found following a mask deployment. We are issuing this AD to prevent the in-line flow indicators of the oxygen mask assembly from fracturing and separating, which could inhibit oxygen flow to the masks. This condition could consequently result in occupants developing hypoxia following a depressurization event.

DATES: This AD is effective August 19, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 19, 2011.

ADDRESSES: For service information identified in this AD, contact B/E Aerospace, 10800 Pflumm Road, Lenexa, Kansas 66215; telephone: (913) 338–9800; fax: (913) 469–8419; Internet: *http://www.beaerospace.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: David Fairback, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4154; fax: (316) 946–4107; e-mail: *david.fairback@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on February 23, 2011 (76 FR 9984). That NPRM proposed to require an inspection/records check to determine the manufacturer and part number of the oxygen mask assemblies installed, an inspection to determine the manufacturing date and modification status if certain oxygen mask assemblies are installed, and corrective action for certain oxygen mask assemblies.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment. B/E Aerospace supports the NPRM.

Request To Address Past Production Cut Over Point Airplanes

The Boeing Company (Boeing) stated that a statement should be included in the final rule AD action to address installation of the affected oxygen mask assemblies on Boeing airplanes that are not included in existing Boeing service bulletins because these airplanes are past production cut over point.

Boeing stated that, due to long-time lag between production cut over change and the release of the AD, there is a high likelihood that on Boeing airplanes past production cut over point, but prior to release of this AD due to lack of awareness of the pending AD release, operators could have installed one of the affected oxygen mask assemblies during routine maintenance. The Applicability section of the proposed AD could mislead operators to not take corrective actions on Boeing airplanes even if they had unknowingly installed affected oxygen mask assemblies on airplanes past production cut over prior to release of the AD. This could also apply to installation of affected oxygen mask assemblies on Boeing airplanes through supplemental type certificate (STC) or through field approval.

We agree with the commenter. However, the unsafe condition on Boeing airplanes will be addressed separately from this AD. If additional action is necessary to address Boeing's concerns, additional rulemaking may be taken specific to Boeing airplanes.

We have not changed the final rule AD action based on this comment.

Request for Applicability Clarification

Boeing stated that there is confusion between the statements in the Differences Between the Proposed AD and the Service Information section and the Applicability section in the proposed AD. The statements are contradictory and could mislead operators. In the proposed AD, it is stated in the Differences Between the Proposed AD and the Service Information section that oxygen mask

assemblies affected by AD 2007–26–06, AD 2008–08–08, AD 2008–12–05, AD 2008–13–21, or AD 2010–14–06 are not affected by this proposed AD. In the Applicability section of the proposed AD, it is stated that the AD applies to B/E Aerospace, Continuous Flow Passenger Oxygen Mask Assembly; Part Numbers 174006–( ), 174080–( ), 174085–( ), 174095–( ), 174097–( ), and 174098–( ) as listed in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010, that are installed on any aircraft except for those Boeing airplanes specified in the ADs referenced in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this AD.

The Differences Between the Proposed AD and the Service Information section excludes mask assemblies by part number from the proposed AD if they are included in the previously referenced ADs. The Applicability section provides relief for Boeing airplanes covered by the previously referenced ADs. This information is contradictory and needs to be clarified in the final rule AD action.

We agree with the commenter. The statement in the Differences Between the Proposed AD and the Service Information section is incorrect. The template used for preparing final rule AD actions does not include the Differences Between the Proposed AD and the Service Information section, which is part of the Discussion section and not part of the actual AD. The Applicability section in the proposed AD is correct. We regret any confusion this may have caused.

We have not changed the final rule AD action based on this comment.

Request To Exclude Certain Airplanes From the Applicability Section

Airbus, jetBlue Airways, and All Nippon Airways stated Airbus airplanes in compliance with B/E Aerospace Service Bulletin 174080–35–02, Rev. 1, as specified in European Aviation Safety Agency (EASA) AD 2010–0165, dated August 5, 2010, should be excluded from the applicability of the proposed AD.

The commenters state that this change would harmonize the EASA AD with the FAA AD and avoid duplicate work.

We partially agree with the commenters. We do not agree to exclude Airbus airplanes affected by the EASA AD because the EASA AD does not include all of the oxygen mask assembly part numbers that contain the potentially defective in-line flow indicators. We do agree that duplicate work should be avoided and that credit for compliance with the EASA AD could be given, but only if it can be positively determined that no oxygen mask assembly part number listed in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010, or listed in EASA AD 2010–0165, dated August 5, 2010, is installed by STC or alternation.

We have revised the final rule AD action to include a statement in paragraph (g)(1) giving conditional credit for compliance with the EASA AD 2010–0165, dated August 5, 2010, or EASA AD 2010–0165R1, correction dated January 31, 2011.

Request To Allow an Additional Method of Compliance

Airbus stated that compliance with the final rule AD action should include inspection of the oxygen mask assembly container for a manufacture date of oxygen mask assemblies that were fitted at time of production delivery providing that no replacement of masks occurred up to the effective date of the final rule AD action.

Airbus stated that they received a statement from B/E Aerospace stating that ''container assemblies that were manufactured after March 1, 2006, do not contain masks that were manufactured before March 1, 2006.'' Airbus confirms that no modification is performed on the container assemblies and/or subassemblies before aircraft delivery.

We partially agree with the commenter. We agree that inspection of the oxygen mask assembly container for manufacture date is adequate only if it can be verified that the original oxygen masks in the container assembly are installed. We disagree that relying on the container assembly manufacture date alone addresses the safety concern because the masks in the container assembly may have been changed after it was manufactured.

We have revised the final rule AD action based on this comment to include inspection of the container assembly date only if it can be positively determined that the passenger oxygen masks within the container assembly have not been modified since it was manufactured.

Request To Change Replacement Compliance Time

Airbus stated that replacement of the in-line flow indicator before further flight after the inspection would only be necessary if, during the physical check of the oxygen mask assembly, it is found broken. Based on difficulties in getting spare parts from the supplier in sufficient time, the compliance time for modifying the affected oxygen masks should be changed to 36 months after the effective date of the AD or within 6,500 hours time-in-service (TIS) after the effective date of the AD, whichever occurs first.

We agree with the commenter. Changing the compliance time for modifying the affected oxygen masks will still address the safety concern of the unsafe condition identified in the proposed AD.

We have revised the final rule AD action to change the replacement/modification compliance time in paragraph (h).

Request To Include Other Oxygen Mask Assemblies in the Applicability Section

BOS Aviation Ltd. stated that the Applicability section should also include additional in-line flow indicator part numbers because faulty in-line flow indictors are fitted to more masks than identified in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010. BOS Aviation Ltd. stated that some technical documentation suggests that a very popular series of AVOX oxygen masks contain the same in-line flow indicator, although it masquerades under AVOX part number 804273–01. They also stated that examination of the failure mode of the suspect in-line flow indicator showed that the failure was where the two halves are glued together, not as was suggested at the ''weak'' sharp molded joint stated in the B/E Aerospace service bulletin and other communication.

We do not agree with the commenter. AVOX stopped using the B/E Aerospace in-line flow indicator in their passenger oxygen masks several years before 2002 when the AVOX part number 804273–01 was introduced. The B/E Aerospace part number 118023–02 in-line flow indicator is not glued; it is welded together. The photos provided by BOS Aviation Ltd. show that the failure did not occur at the weld since the opaque material is still bonded to the transparent material.

The FAA issued Special Alert Information Bulletin (SAIB) NM–11–25 to address an issue with AVOX in-line flow indicators that is different from the B/E Aerospace in-line flow indicators.

We have not changed the final rule AD action based on this comment.

Request To Include Other In-Line Flow Indicators in the Applicability Section

BOS Aviation Ltd. stated that the manufacturer date window be removed from the final rule AD action because several suspect part number in-line flow indicators are in service that were manufactured before the January 1, 2002

date specified in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010. BOS Aviation Ltd. stated that the date is not carried on the in-flow indicator, thereby making it difficult to confirm the age of the in-line flow indicator regardless of the age of the oxygen mask. The same ambiguity applies if there has been any repair to the unit.

We do not agree with the commenter. Based on the failure data we have, we determined that no AD action is necessary for other in-line flow indicators or for in-line flow indicators manufactured before 2002.

We have not changed the final rule AD action based on this comment.

Request To Show Compliance Through Permanent Marking

BOS Aviation Ltd. requested that the personal safety unit (PSU) (as well as the actual oxygen mask assembly) be marked to show compliance with the AD; thereby negating the need to open the PSU and drop the oxygen mask assembly to confirm compliance in the future.

We partially agree with the commenter. We agree that the oxygen mask assembly needs to be marked to show it has been modified as specified in the service bulletin. However, we do not agree to require marking of the oxygen mask stowage container to show compliance with the AD when compliance can be confirmed by checking the maintenance records.

We have not changed the final rule AD action based on this comment.

Request To Add Additional Guidance

BOS Aviation Ltd. stated that the FAA should instruct owner/operators to use standard maintenance practices when doing the actions required in the final rule AD action. This should be done for a myriad of good reasons that relate primarily to safety, none of which goes away simply because the maintenance is carried out as a result of an AD or a service bulletin.

We partially agree with the commenter. We agree that standard maintenance practices should always be used. Appropriate personnel and procedures must be used for the inspection and modification required by this AD to ensure safety and not create additional hazards. We disagree that language should be added to the AD to emphasize safety when doing actions required in an AD.

We have not changed the final rule AD action based on this comment.

Request To Update Cost of Compliance Section

BOS Aviation Ltd. stated that B/E Aerospace has offered to supply replacement in-line flow indicators to operators free of charge. The FAA assessed the cost of compliance based on the manpower requirement stated in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2011, and is grossly underestimated. In many applications, the suspect oxygen masks are contained in a PSU that is live and installed in operational aircraft. The proposed AD requires opening and disassembling the oxygen mask assembly in order to carry out the inspection, in addition to modifying any defective oxygen mask. To do this task safely and following various manufacturers' maintenance instructions, the oxygen mask assembly should be removed from the aircraft, taken to an oxygen clean environment, and made safe in preparation for maintenance.

Once open, depending on type, the oxygen mask assemblies are tightly wrapped with their tube specifically coiled and packaged with the in-line flow indicator not immediately visible, which then requires ''unpacking'' the box that may contain up to four masks. The box then requires proper ''re-packing'' before reinstallation and test in the aircraft.

BOS Aviation Ltd. stated that they have conducted tests that would suggest the accomplishment time (as presented in AD 2007–26–06 for example) is probably adequate for an aircraft of a half or a third the capacity of the 747. Moreover, where aircraft PSUs use chemical oxygen generators, the issue to ensure safety with respect to the oxygen generating canister becomes paramount and increases the workhours required. Our estimate, at the very best, for accomplishing the AD on an airplane's set of PSUs on a 150 seat narrow body airplane, will require a minimum of 3 days down time, not including transport of the PSUs to a suitable workshop for accomplishment of the AD.

We do not agree with the commenter. The cost estimate of $19,400,00 for the estimated number of affected oxygen mask assemblies is based on the following:

- The cost estimate for the AD assumes that all of the 400,000 part number in-line flow indicators manufactured on or after January 1, 2002, and before March 1, 2006, are replaced for compliance with this AD. In reality, most of these in-line flow indicators are installed in Boeing and Airbus airplanes and will be replaced in compliance with the previously referenced ADs. The exact number that will be replaced in accordance with this AD is unknown, but it will be less than the estimated 400,000.
- The cost estimate assumes 30 minutes are required to do the actions required in this AD for each affected oxygen mask assembly. This estimate is much higher than the 3-minute time proposed in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010.
- For the oxygen mask assemblies to be maintained in an airworthy condition, a recurrent inspection for each oxygen mask is necessary. The 6,500-hour TIS/36-month compliance time of this AD will allow many operators to do the actions required in this AD at the same time as the recurrent inspection.

We have not changed the final rule AD action based on this comment.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 400,000 oxygen mask assemblies.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace the in-line flow indicator per mask.	0.5 work-hour × $85 per hour = $42.50 ...	$6.00	$48.50	$19,400,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

2011–14–08 B/E Aerospace: Amendment 39–16743; Docket No. FAA–2011–0139; Directorate Identifier 2010–CE–057–AD.

Effective Date

(a) This AD is effective August 19, 2011.

Affected ADs

(b) None. This AD does not revise or supersede any existing ADs. The following ADs address the unsafe condition described in paragraph (e) of this AD for certain installations on certain Boeing airplanes:

(1) AD 2007–26–06, Amendment 39–15308 (72 FR 71210, December 17, 2007), for certain Boeing Model 747–200B, 747–300, and 747–400 series airplanes identified in Boeing Service Bulletin 747–35–2119, dated November 30, 2006;

(2) AD 2008–08–08, Amendment 39–15460 (73 FR 19982, April 14, 2008), for certain Boeing Model 757–200, 757–200CB, 757–200PF, and 757–300 series airplanes identified in Boeing Special Attention Service Bulletin 757–35–0028, dated April 9, 2007;

(3) AD 2008–12–05, Amendment 39–15548 (73 FR 32996, June 11, 2008), for certain Boeing Model 777–200, 777–200LR, 777–300, and 777–300ER series airplanes identified in Boeing Special Attention Service Bulletin 777–35–0019, dated March 9, 2006;

(4) AD 2008–13–21, Amendment 39–15584 (73 FR 37781, July 2, 2008), for certain Boeing Model 767–200, 767–300, and 767–400ER series airplanes identified in Boeing Special Attention Service Bulletin 767–35–0054, dated July 6, 2006; and

(5) AD 2010–14–06, Amendment 39–16351 (75 FR 38014, July 1, 2010), for certain The Boeing Company Model 737–200, 737–300, 737–400, and 737–500 series airplanes identified in Boeing Special Attention Service Bulletin 737–35–1099, Revision 1, dated April 23, 2009.

Applicability

(c) This AD applies to B/E Aerospace, Continuous Flow Passenger Oxygen Mask Assembly; Part Numbers 174006–( ), 174080–( ), 174085–( ), 174095–( ), 174097–( ), and 174098–( ) as listed in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010, that are installed on any aircraft except for those Boeing airplanes specified in the ADs referenced in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this AD.

Note 1: The service bulletin lists the part numbers with a suffix of ''XX.'' The TSO Index lists the part numbers with the suffix of ''( ).'' For the purposes of this AD, we have used ''( ).''

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 35: Oxygen.

Unsafe Condition

(e) This AD was prompted by a report that several oxygen mask assemblies with broken in-line flow indicators were found following a mask deployment. We are issuing this AD to prevent the in-line flow indicators of the oxygen mask assembly from fracturing and separating, which could inhibit oxygen flow to the masks. This condition could consequently result in occupants developing hypoxia following a depressurization event.

Compliance

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

Records Check/Inspection

(g) Within 36 months after August 19, 2011 (the effective date of this AD) or within 6,500 hours time-in-service (TIS) after August 19, 2011 (the effective date of this AD), whichever occurs first, do the following:

(1) Do a records check to determine if any oxygen mask assembly part number listed in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010, is installed in the aircraft.

(i) If you cannot positively determine the manufacturer and part number of any oxygen mask assembly installed, do a general visual inspection to determine if any oxygen mask assembly part number listed in B/E Aerospace Service Bulletin 174080–35–04, Rev. 000, dated September 6, 2010, is installed in the aircraft.

(ii) If you can positively determine that no oxygen mask assembly part number listed in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010, is installed, no further action is required by this AD.

(iii) If you can positively determine that any Airbus airplane affected by this AD is in compliance with European Aviation Safety Agency (EASA) AD 2010–0165, dated August 5, 2010, or EASA AD 2010–0165R1, correction dated January 31, 2011, and that no oxygen mask assembly part number listed in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010 is

installed by STC or alteration, no further action is required by this AD.

(iv) If you can positively determine through inspection of the oxygen mask container assembly that the date of manufacture is after March 1, 2006, and you can verify that the original oxygen masks in the container assembly are installed, no further action is required by this AD.

(2) If, as a result of any of the records checks/inspections required in paragraph (g)(1) of this AD, you determine that an oxygen mask assembly part number listed in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010, is installed, inspect the oxygen mask assembly to determine if the in-line flow indicator must be replaced following paragraph II.A. of B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010. If you can positively determine that the in-line flow indicator does not require replacement, no further action is required by this AD.

Modification/Replacement

(h) After the inspection in paragraph (g)(2) of this AD and it was determined the in-line flow indicator must be replaced, within 36 months after August 19, 2011 (the effective date of this AD) or within 6,500 hours TIS after August 19, 2011 (the effective date of this AD), whichever occurs first, modify the oxygen mask assembly by replacing the in-line flow indicator following B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010. As an alternative to modifying the oxygen mask assembly, you may replace the oxygen mask assembly with an airworthy oxygen mask assembly FAA-approved for installation on the aircraft.

Parts Installation

(i) As of August 19, 2011 (the effective date of this AD), do not install a B/E Aerospace oxygen mask having a part number listed in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010, with a manufacturing date on or after January 1, 2002, and before March 1, 2006, on any aircraft, unless it has been modified following the requirements of paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(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 Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(k) For more information about this AD, contact David Fairback, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4154; fax: (316) 946–4107; e-mail: *david.fairback@faa.gov.*

(l) For service information identified in this AD, contact B/E Aerospace, 10800 Pflumm Road, Lenexa, Kansas 66215; telephone: (913) 338–9800; fax: (913) 469–8419; Internet: *http://www.beaerospace.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Material Incorporated by Reference

(m) You must use B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of the service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact B/E Aerospace, 10800 Pflumm Road, Lenexa, Kansas 66215; telephone: (913) 338–9800; fax: (913) 469–8419; Internet: *http://www.beaerospace.com.*

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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

Issued in Kansas City, Missouri, on July 1, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–17205 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1159; Directorate Identifier 2010–NM–006–AD; Amendment 39–16746; AD 2011–14–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–400 and –400D Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires a general visual inspection to determine the routing of the wire bundles in the number two and number three engine pylons near the leading edge, and related investigative and corrective actions if necessary. For certain airplanes, this AD also requires certain concurrent actions. This AD was prompted by a report of a fuel leak from the main fuel feed tube at the number two engine pylon. We are issuing this AD to detect and correct chafing of the main fuel feed tube and the alternating current motor-driven hydraulic pump wire bundle, which could lead to arcing from the exposed wire to the fuel feed tube, and could result in a fire or explosion.

DATES: This AD is effective August 19, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 19, 2011.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–917–6505; fax: 425–917–6590; e-mail: *tung.tran@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on December 1, 2010 (75 FR 74663). That NPRM proposed to require a general visual inspection to determine the routing of the wire bundles in the number two and number three engine pylons near the leading edge, and related investigative and corrective actions if necessary. For certain airplanes, that NPRM also proposed to require certain concurrent actions.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request To Change Wording of Precipitating Event

Boeing requested a change to the wording describing the precipitating event specified in the Summary and Discussion sections and paragraph (e) of the NPRM to clarify the location of the fuel leak. Boeing clarified that, for the record, the fuel leaked from the main fuel feed tube and drained through the drain line.

We agree that changing the language to specify the location of the leak makes the description more accurate. Therefore, we have changed the wording appropriately in the Summary section and paragraph (e) of this AD. However, the subject text does not appear in the Discussion section in the final rule.

Request To Include Service Bulletin Reference in the ''FAA's Determination and Requirements of this Proposed AD'' Paragraph of the NPRM

Boeing requested that we change the last sentence of the ''FAA's Determination and Requirements of this Proposed AD'' paragraph in the NPRM to cite the specific service bulletin number, revision level, and date to differentiate between previous and new service information.

We agree that the requested change might clarify the information. However, because that section is not restated in the final rule, we cannot make the requested change to this AD.

Request To Remove Cost of Concurrent Actions

Boeing requested that we remove the cost of the concurrent inspection and bracket installation from the Costs of Compliance section of the NPRM. Boeing stated that the cost for the concurrent inspection and bracket installation was previously stated in AD 92–27–13, Amendment 39–8448 (58 FR 5920, January 25, 1993), and is not necessary in this proposed AD.

We disagree that it is unnecessary to include the cost of the concurrent actions in this AD. We acknowledge that these costs have already been stated in an existing AD; however, we have provided costs for required actions in this AD, including concurrent actions, regardless of whether operators might already have done them. No change has been made to the AD in this regard.

Request To Include On-Condition Costs

Boeing stated that we should include the costs of inspecting the fuel feed tube and the alternating current motor driven hydraulic pump wire bundle, repairs, replacing the fuel tube, and changing the routing of the wire bundle to above the support bracket.

We agree with the request to include the costs of these actions specified above. We have added an ''On-condition costs'' table to reflect these costs.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not significantly increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 15 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspection of wire routing	1	$85	$0	$85	15	$1,275
Concurrent Inspection and Bracket Installation	9	$85	$0	$765	15	$11,475

We estimate the following costs to do any necessary inspections or repairs that would be required based on the results of the required inspection. We have no way of determining the number of aircraft that might need these inspections or repairs:

ON-CONDITION COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product
Inspection of wire bundle and fuel feed tube	3	$85	$0	$255
Repair of wire bundle, repair or replacement of fuel feed tube, and wire bundle routing change	7	$85	$26	$621

The cost estimate figures discussed above are based on assumptions that no operator has yet accomplished any of the actions required by this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. However, we have been advised that the concurrent inspection and bracket installation have already

been done on some affected airplanes. Therefore, the future economic cost impact of this rule on U.S. operators is expected to be less than the cost impact figure indicated above.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

2011–14–11 The Boeing Company: Amendment 39–16746; Docket No. FAA–2010–1159; Directorate Identifier 2010–NM–006–AD.

Effective Date

(a) This AD is effective August 19, 2011.

Affected ADs

(b) AD 92–27–13, Amendment 39–8448, affects this AD.

Applicability

(c) This AD applies to The Boeing Company Model 747–400 and –400D series airplanes, certificated in any category; as specified in Boeing Service Bulletin 747–29A2114, Revision 1, dated July 15, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic power.

Unsafe Condition

(e) This AD was prompted by a report of a fuel leak from the main fuel feed tube at the number two engine pylon. The Federal Aviation Administration is issuing this AD to detect and correct chafing of the main fuel feed tube and the alternating current motor-driven hydraulic pump wire bundle, which could lead to arcing from the exposed wire to the fuel feed tube, and could result in a fire or explosion.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection

(g) Within 24 months after the effective date of this AD, do a general visual inspection to determine the routing of the wire bundles in the number two and number three engine pylons near the leading edge, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–29A2114, Revision 1, dated July 15, 2010. Do all applicable related investigative and corrective actions before further flight.

Concurrent Requirements

(h) For Model 747–400 series airplanes: Before or concurrently with accomplishing the requirements of paragraph (g) of this AD, install all applicable cable support brackets in the number two and number three engine pylon areas, and do all applicable related investigative and corrective actions, in accordance with Phase II of Boeing Service Bulletin 747–24A2168, Revision 3, dated July 29, 1993. Do all applicable related investigative and corrective actions before further flight. Doing the actions required by paragraph (c) of AD 92–27–13, Amendment 39–8448, is an acceptable method of compliance for the installation required by this paragraph.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Actions accomplished before the effective date of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–29A2114, dated October 1, 2009, are considered acceptable for compliance with the corresponding actions specified in paragraph (g) of this AD.

(j) Actions accomplished before the effective date of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–24A2168, Revision 1, dated December 5, 1991; or Revision 2, dated September 24, 1992; are considered acceptable for compliance with the corresponding actions specified in paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 ACO, send it to ATTN: Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356, telephone: 425–917–6505; fax: 425–917–6590.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

Related Information

(l) For more information about this AD, contact Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356, telephone: 425–917–6505; fax: 425–917–6590; e-mail: *tung.tran@faa.gov.*

Material Incorporated by Reference

(m) You must use Boeing Service Bulletin 747–29A2114, Revision 1, dated July 15, 2010; and Boeing Service Bulletin 747–24A2168, Revision 3, dated July 29, 1993; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on July 1, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–17401 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–64874; File No. S7–30–11]

RIN 3235–AL19

Retail Foreign Exchange Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Interim final temporary rule; request for comments.

SUMMARY: Under section 742(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), certain foreign exchange transactions with persons who are not ''eligible contract participants'' (commonly referred to as ''retail forex transactions,'' and as further defined below) with a registered broker or dealer (''broker-dealer'') will be prohibited as of July 16, 2011, in the absence of the Commission adopting a rule to allow such transactions under terms and conditions prescribed by the Commission. The Commission is adopting interim final temporary Rule 15b12–1T to allow a registered broker-dealer to engage in a retail forex business until July 16, 2012, provided that the broker-dealer complies with the Securities Exchange Act of 1934 (''Exchange Act''), the rules and regulations thereunder, and the rules of the self-regulatory organization(s) of which the broker-dealer is a member (''SRO rules''), insofar as they are applicable to retail forex transactions.

DATES: *Effective Date:* Rule 15b12–1T is effective on July 15, 2011 and will remain in effect until July 16, 2012.

Comment Date: Comments on the interim final temporary rule should be received on or before September 13, 2011.

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/interim-final-temp.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–30–11 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

All submissions should refer to File Number S7–30–11. This file number should be included on the subject line if e-mail is used. To help the Commission to process and review your comments more efficiently, please use only one method. The Commission will post all comments on its Web site: (*http://www.sec.gov/rules/interim-final-temp.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jo Anne Swindler, Assistant Director; Richard Vorosmarti, Special Counsel; or Angie Le, Special Counsel, at (202) 551–5777, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting new Rule 15b12–1T under the Exchange Act as an interim final temporary rule. The rule will expire and no longer be effective on July 16, 2012. The Commission is soliciting comments on all aspects of this interim final temporary rule. The Commission will carefully consider any comments received and intends to take further action if it determines that further action is necessary or appropriate, either prior to or following the expiration of the rule. In making this determination, the Commission may consider a number of alternative approaches with respect to retail forex transactions, including proposing new rules for public comment; issuing a final rule amending the interim final temporary rule; issuing a final rule adopting the interim final temporary rule as final; or allowing the interim final temporary rule to expire without further action, which would allow the statutory prohibition to take effect.

I. Background

On July 21, 2010, President Obama signed into law the Dodd-Frank Act.[1] As amended by the Dodd-Frank Act,[2] the Commodity Exchange Act (''CEA'') provides that a person for which there is a Federal regulatory agency,[3] including a broker-dealer registered under section 15(b) (except pursuant to paragraph (11) thereof) or 15C of the Exchange Act,[4] shall not enter into, or offer to enter into, a transaction described in section 2(c)(2)(B)(i)(I) of the CEA with a person who is not an ''eligible contract participant'' [5] except

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

[2] Public Law 111–203, § 742(c)(2) (to be codified at 7 U.S.C. 2(c)(2)(E)).

[3] 7 U.S.C. 2(c)(2)(E)(i), as amended by § 742(c) of the Dodd-Frank Act, defines a ''Federal regulatory agency'' to mean the Commodity Futures Trading Commission (''CFTC''), the Securities and Exchange Commission, an appropriate Federal banking agency, the National Credit Union Association, and the Farm Credit Administration.

[4] 7 U.S.C. 2(c)(2)(B)(i)(II).

[5] ''Eligible contract participant'' (''ECP'') is defined in CEA section 1a(18), as re-designated and amended by section 721 of the Dodd-Frank Act. *See* Public Law 111–203, § 721 (amending CEA section 1a). The CEA's definition of ECP generally is comprised of regulated persons; entities that meet a specified total asset test (e.g., a corporation, partnership, proprietorship, organization, trust, or other entity with total assets exceeding $10 million) or an alternative monetary test coupled with a non-monetary component (e.g., an entity with a net worth in excess of $1 million and engaging in business-related hedging; or certain employee benefit plans, the investment decisions of which are made by one of four enumerated types of regulated

pursuant to a rule or regulation of a Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe[6] (''retail forex rule'').[7] Transactions described in CEA section 2(c)(2)(B)(i)(I) include ''an agreement, contract, or transaction in foreign currency that * * * is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).''[8] A Federal regulatory agency's retail forex rule must treat all agreements, contracts, and transactions in foreign currency described in CEA section 2(c)(2)(B)(i)(I) and all agreements, contracts, and transactions in foreign currency that are functionally or economically similar to agreements, contracts, or transactions described in CEA section 2(c)(2)(B)(i)(I), similarly.[9] Any retail forex rule also must prescribe appropriate requirements with respect to disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation, and may include such other standards or requirements as the Federal regulatory agency determines to be necessary.[10]

This amendment to the CEA takes effect on July 16, 2011, which is 360 days from the date of enactment of the Dodd-Frank Act.[11] After that date, for purposes of CEA section 2(c)(2)(B), broker-dealers for which the Commission is the ''Federal regulatory agency'' may not engage in off-exchange retail forex futures and options with a customer except pursuant to a retail forex rule issued by the Commission.[12] This prohibition will not apply to (1) forex transactions with a customer who qualifies as an ECP, or (2) transactions that are spot forex contracts or forward forex contracts irrespective of whether the customer is an ECP.[13] However, consistent with other Federal regulatory agencies' retail forex rules, Rule 15b12–1T applies to ''rolling spot'' transactions in foreign currency by broker-dealers.[14] The discussion of the definition of ''retail forex transaction'' below addresses the distinctions between rolling spot forex transactions and spot and forward forex contracts.

Prior to June 2011, the Commission had not been made aware of industry concerns with respect to the operation of section 742 of the Dodd-Frank Act in the absence of Commission rulemaking. In mid-June 2011, however, market participants for the first time brought to the attention of Commission staff the possibility that section 742 of the Dodd-Frank Act may have serious adverse consequences for certain securities markets in the absence of rulemaking by the Commission before the impending effective date of the provision (*i.e.,* July 16, 2011).[15] Although this correspondence from market participants brought this issue to the attention of Commission staff, the Commission understands that this is in fact a wider concern shared by several other market participants. One potential consequence concerns the ability of broker-dealers to facilitate the settlement of foreign securities transactions for retail customers. For example, a broker-dealer may purchase a foreign currency or exchange a foreign currency for U.S. dollars on behalf of a retail customer in connection with the customer's purchase or sale of a security listed on a foreign exchange and denominated in the foreign currency. In particular, a representative of certain market participants informed the staff that section 742 could operate to preclude broker-dealers from continuing to engage in certain foreign exchange transactions that are inherent in certain of their customers' securities transactions, and that serve to minimize their customers' risk exposure to changes in foreign currency rates.[16]

The Commission further understands that there may be other situations in which broker-dealers engage in foreign exchange transactions in connection with facilitating the ordinary execution, clearance, or settlement of customers' securities transactions and that may warrant rulemaking by the Commission in order to avoid market disruption due to the potential application of section 742 of the Dodd-Frank Act. At the same time, the Commission notes that media coverage over the past few years has highlighted potentially abusive practices by some intermediaries in connection with retail forex transactions.[17] The Commission also notes that other regulators have expressed concerns with regard to the retail forex practices of the entities that they regulate.[18]

In order to provide the Commission with the opportunity to receive comments regarding practices in this area and to consider prescribing additional rules to address investor protection concerns (e.g., abusive sales practices, volatility and riskiness of the

entities); and certain governmental entities and individuals that meet defined thresholds. The Commission and the CFTC recently have proposed rules under the CEA that further define ''eligible contract participant'' with respect to transactions with major swap participants, swap dealers, major security-based swap participants, security-based swap dealers, and commodity pools. *See* Exchange Act Release No. 63452 (Dec. 7, 2010), 75 FR 80174 (Dec. 21, 2010). Because transactions that are the subject of this release are commonly referred to as ''retail forex transactions,'' this release uses the term ''retail customer'' to describe persons who are not ECPs.

[6] 7 U.S.C. 2(c)(2)(E)(ii)(I).

[7] As used in this release, ''retail forex rule'' refers to any rule proposed or adopted by a Federal regulatory agency pursuant to section 742(c)(2) of the Dodd-Frank Act.

[8] 7 U.S.C. 2(c)(2)(B)(i)(I).

[9] 7 U.S.C. 2(c)(2)(E)(iii)(II).

[10] 7 U.S.C. 2(c)(2)(E)(iii)(I).

[11] *See* Public Law 111–203, § 754.

[12] *See* 7 U.S.C. 2(c)(2)(B)(i)(II) and 7 U.S.C. 2(c)(2)(E)(ii)(I). On September 10, 2010, the CFTC adopted a retail forex rule for persons subject to its jurisdiction. *See Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries,* 75 FR 55410 (Sept. 10, 2010) (''Final CFTC Retail Forex Rule''). The CFTC had proposed its rules regarding retail forex transactions prior to the enactment of the Dodd-Frank Act. *See Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries,* 75 FR 3282 (Jan. 20, 2010) (''Proposed CFTC Retail Forex Rule''). The Federal Deposit Insurance Corporation (''FDIC'') and the Office of the Comptroller of the Currency (''OCC'') subsequently proposed similar rules. *See Retail Foreign Exchange Transactions,* 76 FR 28358 (May 17, 2011); *Retail Foreign Exchange Transactions,* 76 FR 22633 (Apr. 22, 2011) (''Proposed OCC Retail Forex Rule''). On July 6, 2011, the FDIC adopted final retail forex rules. *See Retail Foreign Exchange Transactions,* 76 FR 40779 (July 12, 2011) (''Final FDIC Retail Forex Rule'').

[13] *See* 7 U.S.C. 2(c)(2)(C)(i)(I) and 7 U.S.C. 2(c)(2)(C)(i)(II); *see also* Final FDIC Retail Forex Rule, *supra* note 12; Proposed OCC Retail Forex Rule, *supra* note 12.

[14] *See* Final FDIC Retail Forex Rule, *supra* note 12 (explaining that its retail forex rule applies to rolling spot forex transactions); Proposed OCC Retail Forex Rule, *supra* note 12 (stating that rolling spot forex transactions should be regulated as retail forex transactions); Final CFTC Retail Forex Rule, *supra* note 12 (stating that the CFTC has the authority to fully regulate ''look-alike,'' leveraged forex contacts, also called off-exchange *Zelener* contracts; as discussed below, *Zelener* contracts are also called rolling spot transactions); Proposed CFTC Retail Forex Rule, *supra* note 12 (''The [CFTC Reauthorization Act of 2008] amends the [CEA] to require that certain intermediaries for forex futures and options and for look-alike contracts (*i.e.,* those at issue in *Zelener*) register in such capacity as the Commission shall determine. * * * '').

[15] *See* Memorandum from P. Georgia Bullitt, Morgan Lewis, on Pershing LLC—Proposed Relief regarding transactions in Retail Foreign Exchange to James Brigagliano et al. (June 17, 2011) (*available at http://www.sec.gov/comments/other/other-initiatives/otherinitiatives-56.pdf*) (''Morgan Lewis Memo'').

[16] *See id.*

[17] *See* Gregory Zuckerman, Carrick Mollenkamp & Lingling Wei, *Suspicion of Forex Gouging Spreads,* The Wall Street Journal (Feb. 10, 2011) at A1 (describing allegations of overcharging of customers by custody banks in currency trades).

[18] *See, e.g.,* Press Release, CFTC, CFTC Releases Final Rules Regarding Retail Forex Transactions (Aug. 30, 2010) (*available at http://www.cftc.gov/PressRoom/PressReleases/pr5883-10.html?dbk*) (noting that retail forex is the largest area of retail fraud that the CFTC oversees); *see also* the Financial Industry Regulatory Authority's (''FINRA'') Regulatory Notice 08–66, (Retail Foreign Currency Exchange) (November 2008) (''FINRA Forex Notice'') (describing the retail forex market as opaque, volatile, and risky).

forex market) [19] as they affect the regulatory treatment of retail forex transactions by broker-dealers—while also preserving potentially beneficial market practices identified to the Commission only weeks before the July 16, 2011 effective date for section 742 of the Dodd-Frank Act—the Commission today is adopting interim final temporary Rule 15b12–1T under the Exchange Act to enable broker-dealers to engage in a retail forex business under the existing regulatory regime for one year. By receiving comments regarding practices in this area, the Commission will be better positioned to determine, for example, the scope of retail forex business conducted by broker-dealers that may be beneficial and poses limited risk to customers and any aspects of the business that may pose substantial undue risks to customers. The Commission will carefully consider comments on what additional rulemaking may be necessary, if any.

II. Discussion

The Commission is adopting interim final temporary Rule 15b12–1T to maintain the ability of broker-dealers to engage in a retail forex business during a one-year period under the existing regulatory framework that now applies to broker-dealers providing these services. The Commission solicits comment on each aspect of the rule and the nature and circumstances surrounding retail forex business conducted by broker-dealers. The Commission intends to carefully consider comments received to determine what further regulatory action, if any, would be appropriate. In making this determination, the Commission may consider a number of alternatives with respect to retail forex transactions, including proposing new rules for public comment; issuing a final rule amending the interim final temporary rule; issuing a final rule adopting the interim final temporary rule as final; or allowing the interim final temporary rule to expire without further action, which would allow the statutory prohibition to take effect.

A. Rule 15b12–1T(a): Definitions

Rule 15b12–1T(a) sets forth the definitions of terms specific to the interim final temporary rule. Many of the terms (*i.e.,* broker, dealer, person, registered broker or dealer, and self-regulatory organization) have the same meanings as in the Exchange Act. The term ''Act,'' as used in the rule, refers to the Exchange Act.[20] The Commission chose these terms and definitions because their meanings are readily understood in the industry.

The term ''retail forex business'' is defined as ''engaging in one or more retail forex transactions with the intent to derive income from those transactions, either directly or indirectly.'' [21] This definition mirrors the definition contained in the FDIC's final retail forex rules and the OCC's proposed rules.[22] This term is intended to include retail forex transactions that may not generate income to the broker-dealer or a retail forex business that is ultimately not profitable. The Commission chose this definition because it focuses on the intent to engage in a series of forex transactions with a business purpose, whether or not the transactions result in income or profits.

The term ''retail forex transaction'' is defined as ''any account, agreement, contract or transaction in foreign currency that is offered or entered into by a broker or dealer with a person that is not an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18)) and that is: (i) A contract of sale of a commodity for future delivery or an option on such a contract; (ii) an option, other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78(f)(a)); or (iii) offered, or entered into, on a leveraged or margined basis, or financed by a broker or dealer or any person acting in concert with the broker or dealer on a similar basis, other than: (A) a security that is not a security futures product as defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)); or (B) a contract of sale that: (1) Results in actual delivery within two days; or (2) creates an enforceable, obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.'' [23] This definition is based on the CEA, incorporates the terms described in CEA sections 2(c)(2)(B) and 2(c)(2)(C),[24] and is substantially the same as the definition in the FDIC's final section 349.2 [25] and the OCC's proposed section 48.2.[26] This definition has at least two important features.

First, certain transactions in foreign currency are excluded from the definition of the term ''retail forex transaction.'' For example, the CEA expressly excludes ''a contract of sale [in foreign currency] that * * * results in actual delivery within 2 days.'' [27] As defined by court decisions as well as the retail forex rules of other Federal regulatory agencies, this term refers to a ''spot'' forex transaction, in which one currency is purchased for another, the transaction is settled within two days, and actual delivery occurs as soon as practicable.[28] Similarly, based upon the language in the CEA,[29] a ''retail forex transaction'' does not include a contract of sale that creates an enforceable obligation to deliver between a buyer and seller that have the ability to deliver and accept delivery, respectively, in connection with their line of business.[30] This statutory language refers to a retail forex forward contract with a commercial entity that creates an enforceable obligation to make or take delivery, provided the commercial counterparty has the ability to make delivery and accept delivery in connection with its line of business.[31] In

[19] In one of its notices to members, FINRA identified several investor protection concerns, including, among other things, the following: ''[t]he retail customer typically does not having pricing information and cannot determine whether the price quoted by the dealer is fair''; ''the dealer acts as counterparty and establishes the price, which means that the dealer has a conflict of interest in the transaction''; ''[p]rice comparisons are also complicated by different compensation structures''; and ''[t]he currency market is extremely volatile and retail forex customers are exposed to substantial currency risk.'' *See* FINRA Forex Notice, *supra* note 18.

[20] Exchange Act Rule 15b12–1T(a)(1).

[21] Exchange Act Rule 15b12–1T(a)(2).

[22] *See* Final FDIC Retail Forex Rule, *supra* note 12; Proposed OCC Retail Forex Rule, *supra* note 12 (each defining ''retail forex business'').

[23] Exchange Act Rule 15b12–1T(a)(3).

[24] 7 U.S.C. 2(c)(2)(B) and 7 U.S.C. 2(c)(2)(C).

[25] *See* Final FDIC Retail Forex Rule, *supra* note 12 (defining ''retail forex transaction'').

[26] *See* Proposed OCC Retail Forex Rule, *supra* note 12 (defining ''retail forex transaction'').

[27] *See* 7 U.S.C. 2(c)(2)(C)(i)(II).

[28] *See generally CFTC* v. *Int'l Fin. Servs. (New York), Inc.,* 323 F. Supp. 2d 482, 495 (S.D.N.Y. 2004) (distinguishing between foreign exchange futures contracts and spot contracts in foreign exchange, and noting that spot transactions—unlike futures contracts—ordinarily call for settlement within two days); *see also Bank Brussels Lambert* v. *Intermetals Corp.,* 779 F. Supp. 741, 748 (S.D.N.Y. 1991) (noting that the spot market is essentially the current market rather than the market for future delivery); Final FDIC Retail Forex Rule, *supra* note 12 (explaining that its retail forex rule does not apply to spot forex contracts); Proposed OCC Retail Forex Rule, *supra* note 12 (explaining that its retail forex rule does not apply to spot forex contracts); Final CFTC Retail Forex Rule, *supra* note 12 (defining ''retail forex transaction'' as any account, agreement, contract or transaction described in section 2(c)(2)(B) or 2(c)(2)(C) of the CEA; as discussed above, by its terms, CEA section 2(c)(2)(C)(i)(II) excludes what are referred to as spot forex transactions).

[29] *See* 7 U.S.C. 2(c)(2)(C)(i)(II).

[30] Exchange Act Rule 15b12–1T(a)(3)(iii)(B)(2).

[31] *See generally CFTC* v. *Int'l Fin. Servs. (New York), Inc.,* 323 F. Supp. 2d at 495 (distinguishing between forward contracts in foreign exchange and foreign exchange futures contracts); *see also* William L. Stein, *The Exchange-Trading Requirement of the Commodity Exchange Act,* 41

addition, consistent with the approach of other Federal regulatory agencies' retail forex rules, the definition does not include forex transactions executed or traded on an exchange or designated contract market.[32]

Second, a ''rolling spot'' forex transaction (also known as a *Zelener* contract),[33] including without limitation such a transaction traded on the Internet, through a mobile phone, or on an electronic platform, falls within the definition of ''retail forex transaction,''[34] and thus is not excluded from the definition as a ''spot'' transaction. This interpretation is consistent with the approach of other Federal regulatory agencies acting pursuant to section 742 of the Dodd-Frank Act to treat all agreements, contracts, and transactions in foreign currency described in CEA section 2(c)(2)(B)(i)(I) and all agreements, contracts, and transactions in foreign currency that are functionally or economically similar to agreements, contracts, or transactions described in CEA section 2(c)(2)(B)(i)(I), similarly.[35] Like a spot forex transaction, a rolling spot forex transaction with a retail customer may initially require delivery of currency within two days. In practice, however, contracts with a retail customer for a rolling spot forex transaction may be indefinitely renewed every other day, and no currency is actually delivered until one party affirmatively closes out the position.[36] The Commission preliminarily believes that a contract with a retail customer for a rolling spot forex transaction is economically more similar to a retail forex future, as described in CEA section 2(c)(2)(B)(i)(I), than a spot forex contract.

B. Rule 15b12–1T(b): Broker-Dealers Engaged in a Retail Forex Business

Rule 15b12–1T(b) allows any registered broker or dealer to engage in a retail forex business provided that such broker or dealer complies with the Exchange Act, the rules and regulations thereunder, and the SRO rules, including, but not limited to, the disclosure, recordkeeping (or documentation), capital and margin, reporting, and business conduct requirements, insofar as they are applicable to retail forex transactions. In order for broker-dealers to engage in retail forex transactions after July 16, 2011, the Commission must adopt rules prescribing appropriate requirements with respect to disclosure, recordkeeping, capital and margin, reporting, business conduct, documentation,[37] and such other standards or requirements that the Commission determines to be necessary.[38] Because broker-dealers engaging in a retail forex business are already subject to numerous regulatory requirements with respect to this business under the Exchange Act, the rules and regulations thereunder, and SRO rules, the Commission does not intend to create any new obligations under this interim final temporary rule for broker-dealers that are engaged in a retail forex business. The Commission provides below illustrative examples of obligations, including certain SRO requirements, applicable to broker-dealers' retail forex transactions.[39]

Disclosure Requirements

Broker-dealers that engage in a retail forex business must comply with the disclosure requirements in NASD Rule 2210.[40] NASD Rule 2210 requires all communications with the public by members of FINRA—including forex-related communications—to be based on principles of fair dealing and good faith, to be fair and balanced, and to provide a sound basis for evaluating the facts regarding the market generally and a customer's specific transaction.[41] NASD Rule 2210 further prohibits broker-dealers from making ''any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public.'' As stated in the FINRA Forex Notice, a broker-dealer's communications with the public ''must adequately disclose the risks associated with forex trading, including the risks of highly leveraged trading,'' and a broker-dealer ''must also make sure that [its] communications with the public are not misleading regarding, among other things: [t]he likelihood of profits or the risks of forex trading, including leveraged trading; [t]he firm's role in or compensation from the trade; [t]he firm's or the customer's access to the interbank currency market; or [t]he performance or accuracy of electronic trading platforms or software sold or licensed by or through the firm to customers in connection with forex trading, including falsely advertising claims regarding slippage rates.''[42]

Further, FINRA stated in its regulatory notice to members that FINRA Rule 2010 (formerly NASD Rule 2110), which requires broker-dealers, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade, applies to all of a broker-dealer's

Vand. L. Rev. 473, 491 (1988). In contrast to forward contracts, futures contracts generally include several or all of the following characteristics: (i) Standardized nonnegotiable terms (other than price and quantity); (ii) parties are required to deposit initial margin to secure their obligations under the contract; (iii) parties are obligated and entitled to pay or receive variation margin in the amount of gain or loss on the position periodically over the period the contract is outstanding; (iv) purchasers and sellers are permitted to close out their positions by selling or purchasing offsetting contracts; and (v) settlement may be provided for by either (a) cash payment through a clearing entity that acts as the counterparty to both sides of the contract without delivery of the underlying commodity; or (b) physical delivery of the underlying commodity. *See* Edward F. Greene et al., *U.S. Regulation of International Securities and Derivatives Markets* § 14.08[2] (8th ed. 2006). *See also* Final FDIC Retail Forex Rule, *supra* note 12; Proposed OCC Retail Forex Rule, *supra* note 12 (each explaining that their retail forex rule would not apply to forex forward contracts).

[32] *See* Final CFTC Retail Forex Rule, *supra* note 12; Final FDIC Retail Forex Rule, *supra* note 12; Proposed OCC Retail Forex Rule, *supra* note 12.

[33] *See CFTC* v. *Zelener,* 373 F.3d 861 (7th Cir. 2004); *see also CFTC* v. *Erskine,* 512 F.3d 309 (6th Cir. 2008) (discussing *Zelener* contracts).

[34] CEA section 2(c)(2)(E)(ii) refers to agreements, contracts, or transactions described in CEA section 2(c)(2)(B)(i)(I) (which is incorporated into subparts (i) and (ii) of the Commission's definition of ''retail forex transaction''). In addition, CEA section 2(c)(2)(E)(iii)(II) requires the Commission to treat similarly all agreements, contracts, and transactions in foreign currency described in CEA section 2(c)(2)(B)(i)(I) and all agreements, contracts, and transactions that are functionally or economically similar to agreements, contracts, or transactions described in CEA section 2(c)(2)(B)(i)(I). The Commission preliminarily believes that agreements, contracts, and transactions described in CEA section 2(c)(2)(C)(i) (including rolling spot forex transactions) are functionally or economically similar to agreements, contracts, or transactions described in CEA section 2(c)(2)(B)(i)(I). Therefore, the Commission is defining ''retail forex transaction'' to encompass the types of agreements, contracts, and transactions described in CEA section 2(c)(2)(C)(i), such as rolling spot forex transactions, and is reflected in subpart (iii) of the Commission's definition. *See also* Final FDIC Retail Forex Rule, *supra* note 12; Proposed OCC Retail Forex Rule, *supra* note 12 (both concluding that rolling spot forex transactions are more like futures than spot contracts). Some courts have held these contracts to be spot contracts in form. *See, e.g., CFTC* v. *Erskine,* 512 F.3d 309, 326 (6th Cir. 2008); *CFTC* v. *Zelener,* 373 F.3d 861, 869 (7th Cir. 2004).

[35] 7 U.S.C. 2(c)(2)(E)(iii)(II); *see also* Final FDIC Retail Forex Rule, *supra* note 12; Proposed OCC Retail Forex Rule, *supra* note 12.

[36] For example, in *Zelener,* the retail forex dealer retained the right, at the date of delivery of the currency, to deliver the currency, roll the transaction over, or offset all or a portion of the transaction with another open position held by its customer. *See CFTC* v. *Zelener,* 373 F.3d 861, 868 (7th Cir. 2004).

[37] The Commission considers the documentation requirements as a subset of recordkeeping requirements. To avoid confusion, the Commission will refer to these requirements collectively as recordkeeping requirements.

[38] *See* Public Law 111–203, § 742(c)(2) (amending CEA section 2(c)(2)).

[39] In this connection, the Commission notes that in the FINRA Forex Notice, FINRA described specific FINRA rules that apply to retail forex activities of broker-dealers, which are referenced below. *See* FINRA Forex Notice, *supra* note 18.

[40] *See id.*

[41] *See id.*

[42] *Id.*

business, including its retail forex business.[43] FINRA stated, for example, that to comply with FINRA Rule 2010, a member firm must adequately disclose to its retail customers that the firm is acting as a counterparty to a transaction, the risks associated with forex trading, and the risks and terms of leveraged trading.[44]

Recordkeeping Requirements

Exchange Act Rules 17a–3 and 17a–4 require a broker-dealer to make, keep current, and preserve records regarding its business. For example, Exchange Act Rules 17a–3(a)(2) and 17a–3(a)(11) require a broker-dealer to make and keep current a general ledger, which provides details relating to all assets, liabilities, and nominal accounts.

A broker-dealer is also required to preserve, for a period of not less than three years, originals of all communications received and copies of all communications (and any approvals thereof) sent by the broker-dealer relating to its business as such, including all communications that are subject to SRO rules regarding communications with the public.[45] As discussed above, communications with the public regarding retail forex are subject to NASD Rule 2210.[46] In addition, Exchange Act Rule 17a–4(b)(7) requires a broker-dealer to preserve, for a period of not less than three years, all written agreements (or copies thereof) entered into by the broker-dealer relating to its business as such, including agreements with respect to any account. Accordingly, broker-dealers must preserve, for a period of not less than three years, originals of all communications received and copies of all communications (and any approvals thereof) sent by the broker-dealer and any written agreements with respect to retail forex transactions.

Another example of recordkeeping requirements applicable to retail forex transactions derives from the Bank Secrecy Act (''BSA''), as amended by the USA PATRIOT Act and implemented under rules promulgated by the U.S. Treasury Department's Financial Crimes Enforcement Network (''FinCEN''), which requires broker-dealers to make, keep, retain, and report certain records that have a high degree of usefulness for the purposes of criminal, tax, or regulatory matters.[47] Exchange Act Rule 17a–8 requires broker-dealers to comply with the reporting, recordkeeping, and record retention requirements of the BSA's implementing regulations.[48]

Net Capital and Margin Requirements

Each broker-dealer must comply with Exchange Act Rule 15c3–1, which prescribes minimum regulatory net capital requirements for broker-dealers and is applicable to all business activities of the broker-dealer, including forex. The Commission notes that, under Exchange Act Rule 15c3–1, any uncollateralized current exposure by a broker-dealer to retail forex transactions must be deducted when computing the firm's net capital. The provisions of the net capital rule dealing with contractual commitment charges under Rule 15c3–1(c)(2)(viii) also apply to commitments with respect to foreign currency. Further, pursuant to Exchange Act section 7, broker-dealer margin requirements are generally set according to Regulation T[49] and SRO margin rules.[50]

Reporting Requirements

A broker-dealer is required to file with the Commission periodic financial and operational reports (*i.e.,* FOCUS Reports), as prescribed in Exchange Act Rule 17a–5, that include relevant information regarding the broker-dealer, including information regarding its retail forex business, if any. In addition, FINRA has advised its member firms that a broker-dealer's expansion of its business to include retail forex transactions constitutes a material change in business operations pursuant to NASD Rule 1017(a), and broker-dealers must first apply for and receive approval from FINRA to conduct this activity.[51] Additionally, as discussed above, Exchange Act Rule 17a–8 requires broker-dealers to report to FinCEN certain enumerated types of transactions, including suspicious transactions in foreign currencies and foreign currency futures and options.[52]

Business Conduct Requirements

In the course of complying with certain Exchange Act requirements, rules and regulations thereunder, and SRO rules relating to business conduct, broker-dealers must address their retail forex business. For example, as discussed above, FINRA Rule 2010 (formerly NASD Rule 2110), which requires broker-dealers, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade, applies to all of a broker-dealer's business, including its retail forex business.[53] FINRA has noted that the following examples of conduct in relation to a retail forex business are prohibited under FINRA Rule 2010, including: Misappropriating or mishandling customer funds; using, selling, or leasing electronic trading platforms that allow ''slippage'' of trade executions in a manner that disproportionately or unfairly affects the customer; manipulating or displaying false quotes; offering mock, or ''demonstration,'' accounts that do not accurately reflect the risks of forex trading; making post-execution price adjustments that are inappropriate and unfavorable to the customer; soliciting business for and introducing customers to a forex dealer without conducting adequate due diligence on the forex dealer, or in a way that misleads the customer about the forex dealer or forex trading, including how customer funds will be held; failing to conduct due diligence on any solicitors that introduce forex customers to the broker-

[43] *Id.*

[44] *Id.*

[45] Exchange Act Rule 17a–4(b)(4). *See* Exchange Act Release No. 44992 (Oct. 26, 2001), 66 FR 55818 (Nov. 23, 2001).

[46] *See supra* note 40 and accompanying text regarding NASD Rule 2210 (communications with the public).

[47] *See* 31 CFR Chapter X (formerly 31 CFR Part 103); *see also* 67 FR 44048 (July 1, 2002) (amendments to BSA regulations requiring that a broker-dealer report suspicious transactions).

[48] *See* Exchange Act Release No. 18321 (Dec. 10, 1981); 46 FR 61454 (Dec. 17, 1981); *see also* FINRA Rule 3310 (formerly NASD Rule 3011) (requiring FINRA member firms to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions). As FINRA noted, ''FINRA member firms engaging in retail forex activities should ensure their Anti-Money Laundering Program addresses the risks associated with the business and includes procedures for monitoring, detecting, and reporting suspicious transactions associated with their retail forex activities.'' FINRA Forex Notice, *supra* note 18.

[49] 12 CFR Part 220.

[50] In 2009, FINRA solicited comment on proposed FINRA Rule 2380 to establish a leverage limitation for retail forex. Specifically, proposed FINRA Rule 2380, as modified by Amendment No. 2, would prohibit any member firm from permitting a customer to: (1) initiate any forex position with a leverage ratio of greater than 4 to 1; and (2) withdraw money from an open forex position that would cause the leverage ratio for such position to be greater than 4 to 1. In addition, it would exempt from the proposed leverage limitation any security as defined in Exchange Act section 3(a)(10). *See* FINRA Regulatory Notice 09–06 (Retail Forex) (January 2009). FINRA filed Amendment No. 1 to the proposed rule change on August 27, 2009. *See* Letter from Gary L. Goldsholle, Vice President and Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission (Aug. 27, 2009). On November 12, 2009, FINRA filed Amendment No. 2 to the proposed rule. Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety. The proposed rule change, as modified by Amendment No. 2, was published for comment in the **Federal Register** on December 8, 2009. Exchange Act Release No. 61090 (Dec. 1, 2009), 74 FR 64776 (Dec. 8, 2009).

[51] *See* FINRA Forex Notice, *supra* note 18 (emphasizing that a broker-dealer's expansion of business into retail forex constitutes a material change in business operations under NASD rules).

[52] *See supra* note 48 and accompanying text.

[53] *See* FINRA Forex Notice, *supra* note 18.

dealer; and accepting forex-related trades from an entity or individual that solicits retail forex business on behalf of the firm in a misleading or deceptive way.[54]

Broker-dealers also need to address retail forex transactions in connection with the customer reserve bank account requirements under Exchange Act Rule 15c3–3. In calculating what amount, if any, a broker-dealer must deposit on behalf of its customers in a reserve bank account pursuant to Exchange Act Rule 15c3–3(e), the broker-dealer must use the formula set forth in Exchange Act Rule 15c3–3a. Specifically, the Commission staff has interpreted Exchange Act Rule 15c3–3 to require that the broker-dealer must include the net balance due to customers in non-regulated commodity accounts, reduced by any deposits of cash or securities with any clearing organization or clearing broker in connection with the open contracts in such accounts.[55]

Furthermore, Exchange Act section 15(b)(4)(E) authorizes the Commission to impose sanctions against a broker-dealer for failing reasonably to supervise another person subject to the firm's supervision who committed a violation of specified laws, including the CEA, unless the broker-dealer established procedures, and a system for applying such procedures, that would reasonably be expected to prevent and detect, insofar as practicable, the violation of law.[56] Thus, broker-dealers engaged in a retail forex business should include in their policies and procedures mechanisms to prevent and detect potential violations of applicable laws and regulations in connection with that business.

The examples provided above are not inclusive of all regulatory requirements administered by the Commission that are implicated by retail forex business conducted by broker-dealers. By providing these examples, the Commission does not intend to suggest that other provisions, rules and regulations, including antifraud provisions and SRO rules, may not apply to retail forex business. At the same time, this interim final temporary rule is not intended to impose new regulatory obligations for broker-dealers, in connection with such business.

C. Rule 15b12–1T(c): Broker-Dealers Deemed To Be Acting Pursuant to a Commission Rule

Rule 15b12–1T(c) provides that any registered broker or dealer that engages in a retail forex business in compliance with paragraph (b) of this rule on or after the effective date of this rule will be deemed, until July 16, 2012, to be acting pursuant to rule or regulation described in CEA section 2(c)(2)(E)(ii)(I), as amended by section 742 of the Dodd-Frank Act. This rule will allow broker-dealers that engage in a retail forex business to do so until July 16, 2012, subject to compliance with existing applicable requirements.

Rule 15b12–1T(c) applies to broker-dealers that prior to the effective date of the rule had entered into retail forex transactions that continue after the effective date. The rule also applies to broker-dealers that begin after the rule's effective date to engage in retail forex transactions. As the Commission explained above, FINRA has advised its member firms that a broker-dealer that expands into a retail forex business must first apply for and receive approval to conduct this activity, as a change in business operations pursuant to NASD Rule 1017(a).[57]

D. Rule 15b12–1T(d): Expiration

Rule 15b12–1T(d) provides that the rule will expire and no longer be effective on July 16, 2012. The Commission believes that the sunset date is appropriate because it will allow the existing regulatory framework for a retail forex business to continue for a defined period and thereby give the Commission sufficient time to determine what further appropriate steps, if any, to take with respect to a retail forex business.

III. Request for Comment

The Commission is requesting comments from all members of the public regarding all aspects of the interim final temporary rule and the current market practices involving retail forex transactions, as well as any investor protection or other concerns that should be addressed by Commission rulemaking. The Commission particularly requests comments from the point of view of broker-dealers that are presently engaged in a retail forex business, broker-dealers that plan to engage in such a business, customers that use retail forex transactions, and ECPs. Together with continued discussions with market participants and other regulators, the Commission considers this rulemaking to be an important avenue for gathering more information from affected parties about the current scope and nature of retail forex transactions. Such information will inform the Commission's thoughtful review of the appropriate regulatory framework for retail forex transactions before or beyond the expiration of the interim final rule. The Commission also seeks comment on the particular questions below, which have been designed to elicit a robust discussion of the uses and reasons for such transactions as they occur today, as well as the potential need for additional regulation. The Commission will carefully consider all comments received, and will benefit especially from detailed comments and comments responding to other commentary in the public file for this rulemaking.

Interim Final Temporary Rule

1. Should the Commission clarify or modify any of the definitions included in Rule 15b12–1T? If so, which definitions and what specific modifications are appropriate or necessary?

2. Are the requirements in Rule 15b12–1T sufficiently clear? Is additional guidance from the Commission necessary?

3. Rule 15b12–1T is an interim final temporary rule that is set to expire on July 16, 2012. Should the Commission extend the expiration date of the rule and if so, for how long?

Possible Permanent Rule Regulating a Retail Forex Business

4. Should the Commission propose new rules relating to the retail forex business operated by broker-dealers for public comment, issue a final rule amending the interim final temporary rule, issue a final rule adopting the interim final temporary rule as final, or allow the interim final temporary rule to expire without further action, which would allow the statutory prohibition to take effect? If further rulemaking is appropriate, what should those rules provide?

5. Should the Commission prohibit a broker-dealer from engaging in retail forex transactions altogether? Alternatively, should the Commission prohibit a broker-dealer from engaging in retail forex transactions other than forex transactions engaged in solely (1) to effect the purchase or sale of a foreign security or in order to clear or settle such purchase or sale, or (2) to facilitate distribution to customers of monies or securities received through corporate actions (e.g., coupons, dividends, class action settlements, and rights offerings)

[54] *See id.*

[55] *See* Division of Market Regulation's Interpretations of Rule 15c3–3 under the Securities Exchange Act of 1934, Exchange Act Release No. 9922 (Jan. 2, 1973); *see also* FINRA Forex Notice, *supra* note 18 (stating that the requirement in Exchange Act Rule 15c3–3 applies to forex transactions).

[56] *See* 15 U.S.C. 78o(b)(4)(E).

[57] *See* FINRA Forex Notice, *supra* note 18.

with respect to foreign securities? Should the Commission permit other retail forex transactions that otherwise facilitate customers' securities transactions and minimize risk exposure to customers from changes in foreign currency rates? Do investors have adequate recourse against broker-dealers for any misconduct related to retail forex transactions? Would retail forex customers be harmed if broker-dealers were unable to provide them with certain forex-related services? Which services? What benefits might retail forex customers receive in connection with forex-related services offered by broker-dealers, as compared to other intermediaries? Would the benefits outweigh potential harm?

6. Should the Commission adopt rules modeled on the Final CFTC Retail Forex Rule, the Final FDIC Retail Forex Rule, or the Proposed OCC Retail Forex Rule? If so, which aspects of those rules should the Commission consider adopting? What would be the associated costs and benefits?

7. Should the Commission adopt final permanent rules governing retail forex transactions? If so, what should those rules address?

8. Are there any requirements or prohibitions not covered in the Final CFTC Retail Forex Rule, the Final FDIC Retail Forex Rule, or the Proposed OCC Retail Forex Rule that the Commission should address? Do existing Exchange Act provisions, rules and regulations thereunder, and SRO rules governing broker-dealers appropriately protect retail forex customers of broker-dealers? Should the Commission consider rulemaking to address any concerns that are not adequately addressed under the current regulatory framework?

9. What distinctive characteristics of retail forex transactions should the Commission take into consideration if it were to engage in further rulemaking relating to such transactions? Are there certain types of retail forex transactions (e.g., rolling spot transactions) that warrant Commission rulemaking to address specific disclosure and other investor protection concerns? [58]

Business Practices of Broker-Dealers Engaged in Retail Forex Transactions

10. What is the extent of the retail forex business currently conducted by broker-dealers? Does the retail forex business currently conducted by broker-dealers consist solely or primarily of forex transactions to facilitate customers' securities transactions and minimize risk exposure to customers from changes in foreign currency rates? In general, what proportion of the retail forex business currently conducted by broker-dealers do such transactions account for? Please provide as comprehensive of a description as possible of the retail forex activities of broker-dealers.

11. For what other reasons do broker-dealers engage in retail forex transactions and what proportion of the retail forex business currently conducted by broker-dealers do such transactions account for? What benefits do these transactions provide to customers? What risks do customers face by engaging in such transactions?

12. Provide estimates of the absolute size of the retail forex business (in both dollar amounts and numbers of transactions) conducted by the broker-dealer. What does this business represent as an estimated percent of the broker-dealer's total business? As an estimated percent of its total forex business?

13. What is the estimated absolute size of the retail forex business (in both dollar amounts and numbers of transactions) conducted by broker-dealers overall? What does this business represent as a percent of their total business? As a percent of their total forex business?

14. What types of customers engage in retail forex transactions, including rolling spot forex transactions?

15. Is the existing regulatory framework for retail forex business as currently conducted by broker-dealers consistent with the protection of investors, the maintenance of fair, orderly, and efficient markets, and the facilitation of capital formation?

16. What disclosures do broker-dealers provide to their customers regarding forex transactions that are conducted to facilitate settlement of securities transactions? What disclosures do broker-dealers provide to customers regarding forex transactions that are conducted for other purposes (e.g., at the customer's request to hedge against currency exchange risk exposure associated with securities transactions, or to engage in speculative activity)? Do broker-dealers adequately and fully disclose the risks associated with forex trading? Do broker-dealers provide information to customers regarding pricing of forex transactions (e.g., pricing methodology, exchange rates for foreign currencies, how the price was calculated)? If so, is this information provided in advance of or following the forex transactions?

17. On what basis do broker-dealers price retail forex transactions? For example, do broker-dealers use the end-of-day currency exchange rate or some other benchmark? Do broker-dealers maintain policies and procedures that govern how forex transactions are handled and priced for retail forex customers? If broker-dealers do not provide pricing information to retail customers, what documentation does the broker-dealer maintain to demonstrate the price provided in retail forex transactions?

18. Are transaction-time records for retail forex transactions currently created and provided to retail customers? If not, what would be the cost to create transaction-time records for retail forex transactions? What would be the cost to report to customers the transaction time and/or the source or basis for the currency exchange rate provided on retail forex transactions?

19. For broker-dealers that provide custody services to retail customers, please describe any retail forex business conducted with respect to these custody services. What disclosures are provided to retail customers in connection with custody services? What pricing information is provided to retail customers in connection with forex transactions conducted in relation to custody services (e.g., pricing methodology, exchange rates for foreign currencies, how the price was calculated)? If pricing information is provided, is this information provided in advance of or following the forex transactions? On what basis do broker-dealers price retail forex transactions conducted in connection with custody services? Do broker-dealers maintain policies and procedures that govern how forex transactions are handled and priced in connection with custody services for retail forex customers? If broker-dealers do not provide pricing information to retail customers in connection with their custody business, what documentation do broker-dealers maintain to demonstrate to examiners the price provided in retail forex transactions?

20. Do broker-dealers provide retail customers alternatives for obtaining prevailing prices on retail forex transactions? For example, do broker-dealers inform customers that the customer can choose whether the broker-dealers will handle retail forex transactions at rates set under a ''standing instruction'' (*i.e.,* non-negotiated trades, where a customer provides the broker-dealer discretion with respect to handling the forex transaction) or as a negotiated trade? Where a broker-dealer provides a

[58] *See, e.g.,* Gregory Zuckerman, Carrick Mollenkamp & Lingling Wei, *Suspicion of Forex Gouging Spreads,* The Wall Street Journal (Feb. 10, 2011) at A1 (describing allegations of overcharging of customers by custody banks in currency trades).

''standing instruction'' process for customers, what methods are used to determine the appropriate exchange rate? Do retail customers receive the interbank rate or some other rate?

21. What conflicts of interest exist in connection with broker-dealers handling and pricing of retail forex transactions? How do broker-dealers manage these conflicts of interest? Do broker-dealers disclose when they are acting as a counterparty to a forex transaction with a retail customer?

22. What compensation structures do broker-dealers apply to retail forex transactions (e.g., per trade commissions, spreads, both)? Do broker-dealers charge retail forex customers rolling fees or additional transaction fees, such as maintenance charges, software licensing fees, commissions paid to introducing brokers or other third-party service providers? Are there breakpoints offered to retail customers based on, for example, volume or number of trades? If so, are the breakpoints available to all retail customers?

23. What fees are charged by broker-dealers for each type of retail forex trade? What is the prevailing market rate for retail forex transactions? How does this differ from the prevailing market rate for forex transactions with ECPs? Does the prevailing market rate differ for standing instruction fees and negotiated trade fees?

24. Do broker-dealers disclose all compensation charged to retail customers? At what point during the customer relationship are compensation disclosures made (e.g., prior to any forex transactions, following a forex transaction)? What is the scope and breadth of those disclosures? Should the Commission consider rules that would expand broker-dealers' disclosure obligations?

25. In light of the authority provided under section 742 of the Dodd-Frank Act for the Commission to consider any other standards or requirements in connection with retail forex transactions that it determines to be necessary, when a broker-dealer solicits business for and introduces customers to a forex dealer, what due diligence does the broker-dealer conduct about the forex dealer? What policies and procedures do broker-dealers have in place, if any, regarding supervision of unregistered solicitors that introduce forex customers to the broker-dealer and that are employees or agents of the broker-dealer?

26. What policies and procedures do broker-dealers have in place regarding advertisements and marketing materials related to forex services offered to retail customers?

27. Do broker-dealers provide information to customers regarding access to the interbank currency market?

28. What disclosures do broker-dealers make to retail customers regarding the performance and accuracy (including slippage rates) of electronic trading platforms or software sold or licensed by or through the firm to customers in connection with forex trading?

29. What information do retail customers believe is important for them to receive from broker-dealers regarding their forex transactions?

30. What business conduct concerns do retail customers have regarding the manner in which their broker-dealers handle and price forex transactions?

31. Do broker-dealers provide structured products to retail customers that require forex transactions at maturity? In connection with these types of products, how are the foreign exchange conversion fees calculated and disclosed? Is the cost of the conversion embedded in the transaction itself, or must investors pay additional fees for conversion?

32. What alternatives for handling forex transactions outside of broker-dealers are available to retail investors? Would a transition of retail forex business out of broker-dealers be efficient or costly from the standpoint of customers?

IV. Other Matters

The Administrative Procedure Act generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.[59] This requirement does not apply, however, if the agency ''for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.'' [60] Further, the Administrative Procedure Act also generally requires that an agency publish an adopted rule in the Federal Register 30 days before it becomes effective.[61] This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.[62] The Commission, for the reasons discussed above and below, finds that notice and solicitation of comment before the effective date of Rule 15b12–1T is impracticable, unnecessary, and contrary to the public interest.[63]

It was not until mid-June 2011 that market participants first informed the Commission of a possible disruption of a potentially important forex service provided by broker-dealers to retail investors if the Commission did not act swiftly to adopt a rule allowing retail forex transactions by July 16, 2011, the effective date of section 742 of the Dodd-Frank Act.[64] As noted above, one representative of certain market participants stated that ''it would expose both broker-dealers and their retail customers to needless operational, price, credit and other risks if the [Commission did] not allow broker-dealers to engage in foreign exchange activity that is ancillary to the broker-dealer's ordinary securities execution, clearing, settlement and booking activity.'' [65] The Commission believes that Congress, in enacting section 742 of the Dodd-Frank Act, may not have intended to prohibit certain types of foreign exchange activity, which might be beneficial to retail investors. To allow the existing regulatory framework for retail forex transactions to continue for a defined period, to avoid potentially unintended consequences from broker-dealers immediately discontinuing their retail forex business, and to provide the Commission sufficient time to determine the appropriate regulatory framework regarding retail forex transactions, the Commission is adopting on an interim final temporary basis Rule 15b12–1T. The Commission does not intend to create new regulatory obligations for broker-dealers in adopting this interim final temporary rule. The Commission further emphasizes that it is requesting comment on all aspects of the rule. The Commission will carefully consider the comments it receives.

V. Paperwork Reduction Act

The Commission notes that interim final temporary Rule 15b12–1T does not create new regulatory obligations for broker-dealers, and therefore does not impose any new ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA''),[66] nor does it create any new filing, reporting, recordkeeping, or disclosure reporting requirements for broker-dealers that are or plan to be engaged in a retail forex business.

[59] *See* 5 U.S.C. 553(b).

[60] *Id.*

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

[62] *Id.*

[63] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are ''impractical, unnecessary or contrary to the public interest,'' a rule ''shall take effect at such time as the federal agency promulgating the rule determines'').

[64] *See* Morgan Lewis Memo, *supra* note 15.

[65] *Id.*

[66] 44 U.S.C. 3501 *et seq.*

Accordingly, the Commission did not submit the interim final temporary rule to the Office of Management and Budget for review in accordance with the PRA. The Commission requests comment on its conclusion that there are no collections of information.

VI. Economic Analysis

A. Introduction

Exchange Act section 23(a)(2) requires the Commission, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, section 2(b) of the Securities Act of 1933 and Exchange Act section 3(f) require the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

As noted above, section 742(c) of the Dodd-Frank Act amended the CEA to prohibit broker-dealers from engaging in retail forex transactions after July 16, 2011, absent rulemaking by the Commission to allow such transactions. If there is no such rulemaking in place, then certain transactions that may be considered beneficial to retail investors, such as hedging transactions and securities conversion trades that take more than two days to settle, may no longer be conducted by broker-dealers. Retail investors who transact in foreign securities through a broker-dealer may find it difficult to minimize their currency risk exposure if risk-minimizing hedging transactions are moved outside the broker-dealer.

The Commission is adopting interim final temporary Rule 15b12–1T to allow broker-dealers to engage in a retail forex business for one year. This rule keeps in place the regulatory framework that currently exists for broker-dealers, and preserves the ability of broker-dealers to provide, among other services, hedging and conversion trades, to retail investors while the Commission considers what further appropriate steps to take, if any.

B. Benefits and Impact on Efficiency, Competition, and Capital Formation

Rule 15b12–1T is intended to minimize market disruptions that may occur when section 724(c) of the Dodd-Frank Act goes into effect. Absent rulemaking by the Commission, broker-dealers would be required to exit the retail forex business. Consequently, retail customers who transact with a broker-dealer for their foreign investments may need to find another service provider for their foreign exchange transactions, which could interrupt the customers' ability to trade in forex, depending on the availability of retail forex-related services outside of broker-dealers.

The interim final temporary rule preserves retail customers' access to the forex markets through broker-dealers. To the extent that this provides hedging opportunities for foreign investments or otherwise promotes an efficient investment opportunity set by, for example, permitting the continued use of forex in connection with clearing trades in foreign securities, economic benefits accrue to retail investors, assuming that no close substitutes exist or that retail access to forex is not easily available elsewhere.

Furthermore, by preserving a channel for retail customers to access forex transactions, the interim final temporary rule prevents any loss of competition in the retail forex space that could result if broker-dealers were required to exit the business. Potential effects of reduced competition include, but are not limited to, higher customer fees for retail forex transactions charged by remaining service providers, as well as reduced availability of forex services to retail customers if customers no longer have access to these transactions through broker-dealers.

C. Costs and Impact on Efficiency, Competition, and Capital Formation

Because Rule 15b12–1T preserves the regulatory regime that is in place prior to the effective date of section 742(c) of the Dodd-Frank Act, the rule imposes no new regulatory burdens beyond those that already exist for broker-dealers engaged in a retail forex business. The Commission recognizes, however, that broker-dealers will face regulatory costs and requirements associated with operating in the retail forex market, which are costs and requirements that they already shoulder from doing business. These include costs related to disclosure, recordkeeping and documentation, capital and margin, reporting, and business conduct. For example, a broker-dealer that presently engages in forex transactions with retail customers incurs costs associated with establishing, maintaining, and implementing policies and procedures to comply with regulatory requirements; preparing disclosure documents; establishing and maintaining forex-related business records; and preparing filings with the Commission, which may include legal and accounting fees.

As discussed above, the Commission is aware of potentially abusive practices that may be occurring in the retail forex market. To the extent that such practices continue, for example, lack of disclosure about fees and forex pricing, or insufficient capital or margin requirements, the retail forex market may bear costs associated with the inefficient provision of retail forex services. The Commission believes, however, that the cost of market disruption that may occur if the Commission does not promulgate the interim final temporary rule is greater than the cost of maintaining the current regulatory regime while the Commission seeks comment and evaluates whether a more comprehensive regulatory regime is necessary.

Because the regulatory requirements for broker-dealers operating in the retail forex market will remain unchanged, Rule 15b12–1T will impose no new burden on competition. Similarly, since the rule preserves an existing regulatory structure, the Commission does not expect any potential impairment of the capital formation process. Finally, because the rule allows hedging transactions, securities conversions, and other transactions that allow investors to continue to have access to these vehicles, the Commission believes that the interim temporary final rule will promote efficiency.

VII. Regulatory Flexibility Certification

The Commission hereby certifies that pursuant to 5 U.S.C. 605(b) the interim final temporary rule contained in this release will not have a significant economic impact on a substantial number of small entities. The interim final temporary rule applies to broker-dealers that may engage in retail forex transactions. However, the Commission does not intend for the interim final temporary rule to impose new regulatory obligations, costs, or burdens on such broker-dealers. While the rule applies to broker-dealers that may be small businesses, any costs or regulatory burdens incurred as a result of the rule are the same as those incurred by small broker-dealers prior to the effective date of section 742 of the Dodd-Frank Act. Broker-dealers have already incurred those costs and regulatory burdens through establishing compliance with the rules adopted by the Commission under the Exchange Act applicable to broker-dealers. Further, the interim final temporary rule does not change the burdens on small broker-dealers relative to large broker-dealers. Accordingly, the

interim final temporary rule should not have a significant economic impact on a substantial number of small entities. The Commission requests comment on its conclusion that Rule 15b12–1T should not have a significant economic impact on a substantial number of small entities.

VIII. Statutory Basis and Text of Amendments

The Commission is adopting Exchange Act Rule 15b12–1T pursuant to section 2(c)(2) of the Commodity Exchange Act, as well as pursuant to the Exchange Act, as amended.

List of Subjects in 17 CFR Part 240

Brokers, Consumer protection, Currency, Reporting and recordkeeping requirements.

In accordance with the foregoing, the Securities and Exchange Commission is amending Title 17, chapter II of the Code of Federal Regulations as follows:

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

■ 1. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et. seq.;* 18 U.S.C. 1350; 12 U.S.C. 5221(e)(3); and 7 U.S.C. 2(c)(2)(E), unless otherwise noted.

* * * * *

■ 2. Add § 240.15b12–1T to read as follows:

§ 240.15b12–1T Brokers or dealers engaged in a retail forex business.

(a) *Definitions.* In addition to the definitions in this section, the following terms have the same meaning as in the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*): ''broker,'' ''dealer,'' ''person,'' ''registered broker or dealer,'' and ''self-regulatory organization.''

(1) *Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(2) *Retail forex business* means engaging in one or more retail forex transactions with the intent to derive income from those transactions, either directly or indirectly.

(3) *Retail forex transaction* means any account, agreement, contract or transaction in foreign currency that is offered or entered into by a broker or dealer with a person that is not an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18)) and that is:

(i) A contract of sale of a commodity for future delivery or an option on such a contract;

(ii) An option, other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78(f)(a)); or

(iii) Offered, or entered into, on a leveraged or margined basis, or financed by a broker or dealer or any person acting in concert with the broker or dealer on a similar basis, other than:

(A) A security that is not a security futures product as defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)); or

(B) A contract of sale that:

(1) Results in actual delivery within two days; or

(2) Creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

(b) Any registered broker or dealer may engage in a retail forex business provided that such broker or dealer complies with the Act, the rules and regulations thereunder, and the rules of the self-regulatory organization(s) of which the broker or dealer is a member, including, but not limited to, the disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation requirements, insofar as they are applicable to retail forex transactions.

(c) Any registered broker or dealer that is engaged in a retail forex business in compliance with paragraph (b) of this section on or after the effective date of this section shall be deemed, until the date specified in paragraph (d) of this section, to be acting pursuant to a rule or regulation described in section 2(c)(2)(E)(ii)(I) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(E)(ii)(I)).

(d) This section will expire and no longer be effective on July 16, 2012.

By the Commission.

Dated: July 13, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–18009 Filed 7–13–11; 4:15 pm]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA–2009–0027]

RIN 0960–AH02

Electronic Substitutions for Form SSA–538

AGENCY: Social Security Administration.

ACTION: Final rule with request for comments.

SUMMARY: We are revising our regulations to reflect our use of electronic case processing at the initial and reconsideration levels of our administrative review process. Our prior rule required adjudicators at these levels to complete a Form SSA–538, Childhood Disability Evaluation Form, in all cases of children alleging disability or continuing disability under title XVI of the Social Security Act (Act). However, we developed and now use a Web-based tool that assists our adjudicators in making disability determinations in several States, and we plan to expand its use to other States. We are revising our regulation to reflect the new tool. We are not changing the requirement that State agency medical and psychological consultants must affirm the accuracy and completeness of their findings of fact and discussion of the supporting evidence, only the manner in which they may provide the required findings and affirmation. We expect that this revision will improve our efficiency by increasing our use of electronic resources.

DATES: These rules are effective on July 15, 2011. *Comment Date:* To ensure that your comments are considered, we must receive them no later than September 13, 2011.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2009–0027 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

- *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2009–0027. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.
- *Fax:* Fax comments to (410) 966–2830.

• *Mail:* Address your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

What revision are we making?

We are revising paragraph (g) in § 416.924 of our regulations. This paragraph explains how adjudicators at each level of our administrative review process must explain their findings about whether a child is disabled or continues to be disabled under the Supplemental Security Income (SSI) program. As currently drafted, that paragraph requires us to complete a standard Form SSA–538, Childhood Disability Evaluation Form, when we make an initial or reconsideration determination. The form outlines the steps of the sequential evaluation process for children under SSI, and we use it to explain our findings.

We are removing the requirement that we complete a specific form, the SSA–538. Instead, we are revising § 416.924(g) to provide that adjudicators at the initial and reconsideration levels will indicate their findings ''in writing in a manner that we prescribe.''

Why are we making this revision?

We are making this revision because we process some of our cases electronically, and we plan eventually to process all of our cases electronically. The State agencies that are already processing cases electronically use a web-based tool we developed to indicate their findings. The web-based tool does not include an exact copy of our paper Form SSA–538,[1] although it includes all of the major elements of the SSA–538 at appropriate points as the program leads adjudicators (including State agency medical and psychological consultants) through the decisionmaking process in SSI childhood cases. Both the SSA–538 and the web-based tool include choices of possible case dispositions and space in which to explain the disposition. When a functional assessment is required, both the SSA–538 and the web-based tool provide: (1) Space for explaining the assessment of the child's limitation in each of the six functional domains (§ 416.926a(b)(1)); (2) choices for indicating the severity of the limitation of any affected domains; and (3) selections for whether a child's impairment or combination of impairments functionally equals the listings. They also require the State agency medical or psychological consultant with overall responsibility for the findings to affirm that:

• He or she considered essential policy factors and evidence,[2] and

• The determination is accurate and complete.

The tool also requires affirmations from any other medical or psychological consultant(s) who provided input for the findings.

Since we do not yet use electronic programs to process cases in all State agencies, we are not eliminating the Form SSA–538, only removing reference to it from § 416.924(g). We are revising the paragraph only to provide us with the flexibility we need to use electronic programs in making disability determinations for children under SSI.

Regulatory Procedures

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Social Security Act, section 702(a)(5). The APA provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.

We find that there is good cause under 5 U.S.C. 553(b)(B) for dispensing with notice and public comment procedures because notice and public comment are unnecessary. As we indicated above, the only change we are making in these rules is to remove our requirement to use a specific paper form, which will allow State agency adjudicators to show, explain, and affirm their findings in other ways. We are not making any substantive changes to the information they must provide or to our signature requirements. As we explained in more detail earlier in this preamble, the web-based tool includes all of the essential elements of the SSA–538; it simply does not include an electronic version of a ''Form SSA–538'' or contain web pages that look exactly like the paper form.

For the same reason, we also find good cause for dispensing with the 30-day delay in the effective date of a final rule under 5 U.S.C. 553(d). The change represents merely another option for recording and affirming our findings and does not change the substance of what we require adjudicators to record. Therefore, we find that it is unnecessary to delay the effective date of these rules.

Executive Order 12866, as supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed it.

Regulatory Flexibility Act

We certify that this final rule does not have a significant economic impact on a substantial number of small entities because it affects only persons or States. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This rule does not create any new or affect any existing collections and, therefore, does not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Program No. 96.006, Supplemental Security Income.)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, blind, disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental security income (SSI).

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we amend title 20 of the Code of Federal Regulations, chapter III, part 416, subpart I as follows:

[1] In some cases, adjudicators still complete the paper Form SSA–538 and include a scanned copy of the form in the electronic case record. We plan eventually to end this practice and to use only the electronic tool.

[2] We list the same factors in the web-based tool that we list on form SSA–538.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

■ 1. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a) (5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 2. Amend § 416.924 by revising paragraph (g) to read as follows:

§ 416.924 How we determine disability for children.

* * * * *

(g) *How we will explain our findings.* When we make a determination or decision whether you are disabled under this section or whether your disability continues under § 416.994a, we will indicate our findings at each step of the sequential evaluation process as we explain in this paragraph. At the initial and reconsideration levels of the administrative review process, State agency medical and psychological consultants will indicate their findings in writing in a manner that we prescribe. The State agency medical or psychological consultant (see § 416.1016) or other designee of the Commissioner has overall responsibility for completing the prescribed writing and must sign the prescribed writing to attest that it is complete, including the findings of fact and any discussion of supporting evidence. Disability hearing officers, administrative law judges and the administrative appeals judges on the Appeals Council (when the Appeals Council makes a decision) will indicate their findings at each step of the sequential evaluation process in their determinations or decisions. In claims adjudicated under the procedures in part 405 of this chapter, administrative law judges will also indicate their findings at each step of the sequential evaluation process in their decisions.

[FR Doc. 2011–17859 Filed 7–14–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2010–F–0103]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Hydroxypropyl Cellulose

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations for hydroxypropyl cellulose by lowering the minimum permitted viscosity from 145 centipoises (cPs) to 10 cPs and to permit its use as a binder in dietary supplements. This action is in response to a petition filed by Nisso America, Inc.

DATES: This rule is effective July 15, 2011. Submit either electronic or written objections and requests for a hearing by August 15, 2011. See section VII of this document for information on the filing of objections.

ADDRESSES: You may submit either electronic or written objections and requests for a hearing, identified by Docket No. FDA–2010–F–0103, by any of the following methods:

Electronic Submissions

Submit electronic objections in the following way:

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

Written Submissions

Submit written objections in the following ways:

• *Fax:* 301–827–6870.

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

Instructions: All submissions received must include the Agency name and Docket No. FDA–2010–F–0103 for this rulemaking. All objections received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting objections, see the ''Objections'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Laura Dye, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1275.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of April 8, 2010 (75 FR 17928), FDA announced that Nisso America Inc., 45 Broadway, Suite 2120, New York, NY 10006, filed a food additive petition (FAP 0A4780). The petition proposed to amend the food additive regulations in § 172.870 (21 CFR 172.870), by lowering the minimum permitted viscosity of hydroxypropyl cellulose (HPC) identified in § 172.870(a)(1) from 145 cPs to 10 cPs and to permit its use as a binder in dietary supplements.

Section 172.870 includes both high-substituted HPC, which contains not more than 4.6 hydroxypropyl groups per anhydroglucose unit (§ 172.870(a)(1)), and low-substituted HPC, which contains on average 0.1 to 0.4 hydroxypropyl groups per anhydroglucose unit (§ 172.870(a)(2)). High-substituted HPC can be used, in accordance with good manufacturing practice, as an emulsifier, film former, protective colloid, stabilizer, suspending agent and thickener (§ 172.870(b)(1)). Low-substituted HPC can be used, in accordance with good manufacturing practice, as a binder and disintegrator in tablets or wafers containing dietary supplements (§ 172.870(b)(2)). It is the high-substituted HPC regulated under § 172.870(a)(1) and (b)(1) that is the subject of this petition.

II. Evaluation of Safety

Under the general safety standard in section 409 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.'' To establish with reasonable certainty that

a food additive is not harmful under its intended conditions of use, FDA considers the estimated human dietary intake of the additive, the additive's toxicological data, and other relevant information (such as published literature) available to the Agency.

Both high-substituted HPC (the subject of this petition) and low-substituted HPC are forms of cellulose and cellulose derivatives. The safety of cellulose and cellulose derivatives has been studied extensively in animals and humans. These studies show that cellulose and cellulose derivatives pass unchanged through the gastrointestinal tract and can be quickly detected in the feces of test animals and humans when consumed, confirming that the consumption of cellulose and cellulose derivatives at the proposed viscosity and use level will not result in toxicity. The Joint Food and Agriculture Organization and the World Health Organization (FAO/WHO) Expert Committee for Food Additives (JECFA) has evaluated the food uses of modified celluloses, including HPC, and has concluded that, as a group, modified celluloses are of very low toxicity at the levels of intake necessary to achieve the desired effect and do not pose a hazard to health (Ref. 1). Viscosity is not specified by the JECFA as a factor related to the safety of these additives.

Although there is no available safety testing directly on HPC with a viscosity of < 145 cPs, there have been numerous studies on the viscosity related safety effect for other modified celluloses. Most of the safety studies we reviewed analyzed the use of cellulose and cellulose derivatives. All of these studies support the assertion that there is no safety effect arising from a change in viscosity. Because high-substituted HPC with a minimum viscosity of 10 cPs is not expected to have significantly different biological properties than those cellulose and cellulose derivatives which have been studied, or the high and low-substituted HPC currently permitted under § 172.870, FDA concludes that the proposed use of high-substituted HPC with a minimum viscosity of 10 cPs is safe.

Lastly, because high-substituted HPC with a minimum viscosity of 10 cPs is intended to be used for the same purposes as are currently permitted for either high and low-substituted HPC, including as a binder in dietary supplements, FDA concludes that the proposed changes to § 172.870 will not result in an increase in the combined overall daily intake of high-substituted and low-substituted HPC. Thus, permitting the use of high-substituted HPC with a minimum viscosity of 10 cPs for use as a binder in dietary supplements will not result in an increased intake or harm to human health under the established conditions of use.

III. Conclusion

FDA reviewed data in the petition and other available relevant material to evaluate the safety of the petitioned use of high-substituted HPC with a minimum viscosity of 10 cPs as an emulsifier, film former, protective colloid, stabilizer, suspending agent, or thickener in food, and as a binder in dietary supplements. Based on this information, FDA concludes that the proposed use of the additive is safe and will achieve its intended technical effect under the proposed conditions of use. Therefore, the regulations in 21 CFR part 172 should be amended as set forth in this document.

IV. Public Disclosure

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

V. Environmental Impact

The Agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 0A4780 (75 FR 17928). No new information or comments have been received that would affect the Agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VI. Paperwork Reduction Act of 1995

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

VII. Objections

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

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

FDA's review of this petition was limited to section 409 of FD&C Act. This final rule is not a statement regarding compliance with other sections of the FD&C Act. For example, the Food and Drug Administration Amendments Act of 2007, which was signed into law on September 27, 2007, amended the FD&C Act to, among other things, add section 301(ll) (21 U.S.C. 331(ll)). Section 301(ll) of the FD&C Act prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the FD&C Act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations have been instituted and their existence has been made public, unless one of the exceptions in section 301(ll)(1) to (ll)(4) applies. In our review of this petition, FDA did not consider whether section 301(ll) of the FD&C Act or any of its exemptions apply to food containing this additive. Accordingly, this final rule should not be construed to be a statement that a food containing this additive, if introduced or delivered for introduction into interstate commerce, would not violate section 301(ll) of the FD&C Act. Furthermore, this language is included in all food additive final rules and therefore should not be construed to be a statement of the likelihood that section 301(ll) of the FD&C Act applies.

IX. References

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**).

1. Evaluations of the Joint FAO/WHO Expert Committee on Food Additives (JECFA), Hydroxypropyl Cellulose Toxicology Monograph 687, FAS 26–JECFA 35/85, 1989; *http://apps.who.int/ipsc/database/evaluations/search.aspx.*

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

■ 2. Section 172.870 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 172.870 Hydroxypropyl cellulose.

* * * * *

(a) * * *

(1) A cellulose ether containing propylene glycol groups attached by an ether linkage that contains, on an anhydrous basis, not more than 4.6 hydroxypropyl groups per anhydroglucose unit. The additive has a minimum viscosity of 10 centipoises for a 10 percent by weight aqueous solution at 25 degrees C.

* * * * *

(b) * * *

(1) The additive identified in paragraph (a)(1) of this section is used or intended for use as an emulsifier, film former, protective colloid, stabilizer, suspending agent, or thickener in food, in accordance with good manufacturing practice. The additive also may be used as a binder in dietary supplements, in accordance with good manufacturing practice.

* * * * *

Dated: July 6, 2011.

Susan M. Bernard,

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

[FR Doc. 2011–17928 Filed 7–14–11; 8:45 am]

BILLING CODE 4160–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in August 2011. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective August 1, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for August 2011.[1]

The August 2011 interest assumptions under the benefit payments regulation will be 2.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for July 2011, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during August 2011, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE–EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

■ 2. In appendix B to part 4022, Rate Set 214, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
214	8–1–11	9–1–11	2.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 214, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
214	8–1–11	9–1–11	2.25	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 12th day of July 2011.

Laricke Blanchard,

Deputy Director for Policy Pension Benefit Guaranty Corporation.

[FR Doc. 2011–17931 Filed 7–14–11; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0578]

RIN 1625–AA00

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

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor from August 3, 2011 through August 31, 2011. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after fireworks events. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified area in Chicago Harbor. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port, Sector Lake Michigan.

DATES: The regulations in 33 CFR 165.931 will be enforced at various times and on various dates between 9:15 p.m. on August 3, 2011 to 9:45 p.m. on August 31, 2011.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL listed in 33 CFR 165.931 for the following events:

(1) *Navy Pier Fireworks;* on August 3, 2011 from 9:15 p.m. through 9:45 p.m.; on August 6, 2011 from 10: p.m. through 10:30 p.m.; on August 10, 2011 from 9:15 p.m. through 9:45 p.m.; on August 13, 2011 from 10 p.m. through 10:30 p.m.; on August 17, 2011 from 9:15 p.m. through 9:45 p.m.; on August 20, 2011 from 10 p.m. through 10:30 p.m.; on August 24, 2011 from 9:15 p.m. through 9:45 p.m.; on August 27, 2011 from 10 p.m. through 10:30 p.m.; and on August 31, 2011 from 9:15 p.m. through 9:45 p.m.

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

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

Dated: June 29, 2011.

M.W. Sibley,

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

[FR Doc. 2011–17795 Filed 7–14–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0372]

RIN 1625–AA00

Safety Zone; BGSU Football Gridiron Classic Golf and Dinner Fireworks, Catawba Island Club, Port Clinton, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Captain of the Port Detroit Zone on Lake Erie, Port Clinton, Ohio. This zone is intended to restrict vessels from portions of Lake Erie during the BGSU Football Gridiron Classic Golf and Dinner Fireworks. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule is effective from 9:30 p.m. on July 25, 2011 until 10 p.m. on July 25, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0372 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0372 in the ''keyword'' box, and then clicking ''search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail BM1 Tracy Girard, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419)418–6036, e-mail *tracy.m.girard@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 comment period to run would be impractical in that it would prevent the Captain of the Port Detroit from performing the function of keeping the boating public safe from the hazards associated with a maritime 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**. Waiting for a 30 day effective period to run is impracticable and contrary to the public interest for the same reasons discussed in the preceding paragraph.

Background and Purpose

On July 25, 2011, Bowling Green State University will hold its BGSU Football Gridiron Classic Golf and Dinner Fireworks, a fundraising golf tournament at the Catawba Island Club on the shores of Lake Erie. The associated fireworks will be launched from a waterborne platform between 9:30 p.m. and 10 p.m. The Captain of the Port Detroit has determined that waterborne fireworks displays present various public hazards. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm. 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 these events and help minimize the associated risks.

Discussion of Rule

Because of the aforementioned hazards, the Captain of the Port Detroit has determined that a temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of the BGSU Football Gridiron Classic Golf and Dinner Fireworks Display. The safety zone will encompass all U.S. navigable waters of Lake Erie within a 75-yard radius of the fireworks launch site located at position 41°34′18.10″ N, 082°51′18.70″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Detroit or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit or his designated on scene representative. The Captain of the Port, Sector Detroit or his designated 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. The safety zone around the pier will be relatively small and exist for relatively short time. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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 and operators of vessels intending to transit or anchor in a portion of the Lake Erie, Catawba Island, Port Clinton, OH between 9:30

p.m. on July 25, 2011 and 10 p.m. on July 25, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be in effect for thirty minutes. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 023–01, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction because it involves the establishment of a temporary 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. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0372 to read as follows:

§ 165.T09–0372 Safety Zone; BGSU Football Gridiron Classic Golf Dinner Fireworks, Catawba Island; Port Clinton, OH.

(a) *Location.* The following area is a temporary safety zone: all U.S.

navigable waters of Lake Erie, Catawba Island, Port Clinton, OH within a 75-yard radius of the fireworks launch site located at position 41°34′18.10″ N, 082°51′18.70″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective and enforcement period.* This regulation is effective and will be enforced from 9:30 p.m. until 10:00 p.m. on July 25, 2011. The Captain of the Port, Sector Detroit, or his on scene representative may suspend enforcement of the safety zone at any time.

(c) *Regulations.*

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

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

(3) The ''on-scene representative'' of the Captain of the Port, Sector Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Sector Detroit to act on his behalf. The on-scene representative of the Captain of the Port, Sector Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port, Sector Detroit or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Detroit or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Detroit or his on-scene representative.

Dated: June 30, 2011.

J. E. Ogden,

Captain, U.S. Coast Guard, Captain of the Port, Sector Detroit.

[FR Doc. 2011–17800 Filed 7–14–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2010–0577]

RIN 1625–AA00

Safety Zone; Annual Events Requiring Safety Zones in Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce this safety zone for annual fireworks events in the Captain of the Port Sector Lake Michigan zone at various times from 10 p.m. on July 21, 2011 through 11 p.m. on July 30, 2011 and then again from 10:15 p.m. through 11 p.m. on August 21, 2011. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after fireworks events. During the aforementioned periods, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified. During the enforcement period, no person or vessel may enter these safety zones without permission of the Captain of the Port, Sector Lake Michigan.

DATES: The regulations in 33 CFR 165.935 will be enforced at various times between 10 p.m. on July 21, 2011 and 11 p.m. on July 30, 2011 and then again between 10:15 p.m. and 11 p.m. on August 21, 2011.

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

SUPPLEMENTARY INFORMATON: The Coast Guard will enforce the safety zone listed in 33 CFR 165.935, Safety Zones, Milwaukee Harbor, Milwaukee, WI, for the following events:

(1) *Festa Italiana fireworks display* on July 21, 2011 from 10 p.m. through 10:45 p.m.; on July 22, 2011 from 10 p.m. through 10:45 p.m.; on July 23, 2011 from 10 p.m. through 10:45 p.m.; on July 24, 2010 from 10 p.m. through 10:45 p.m.

(2) *German Festival fireworks display* on July 29, 2011 from 9:45 p.m. through 10:30 p.m.; on July 30, 2011 from 10:15 p.m. through 11 p.m.

(3) *Irish Festival fireworks display* on August 21, 2011 from 10:15 p.m. through 11 p.m.

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

This notice is issued under authority of 33 CFR 165.935 Safety Zone, Milwaukee Harbor, Milwaukee, WI and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Dated: June 29, 2011.

M.W. Sibley,

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

[FR Doc. 2011–17798 Filed 7–14–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket No. USCG–2011–0584]

RIN 1625–AA00

Safety Zone; Truman-Hobbs Alteration of the Elgin Joliet & Eastern Railroad Drawbridge; Illinois River, Morris, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Illinois River near Morris, Illinois. This zone is intended to restrict vessels from a portion of the Illinois River due to the Truman-Hobbs alteration of the Elgin Joliet & Eastern Railroad

Drawbridge. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the alteration of the Elgin Joliet & Eastern Railroad Drawbridge.

DATES: This rule is effective in the CFR on July 15, 2011 through 7 a.m. on July 16, 2011. This rule is effective with actual notice for purposes of enforcement at 7 a.m. on July 8, 2011. This rule will remain in effect through 7 a.m. on July 16, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0584 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0584 in the ''Keyword'' box, and then clicking ''search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or e-mail BM1 Adam Kraft, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Adam.D.Kraft@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when an agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 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 prevent the Coast Guard from protecting the public and vessels 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 reasons discussed in the preceding paragraph, a 30-day notice period would be impracticable and contrary to the public interest.

Background and Purpose

The Truman-Hobbs alteration of the Elgin Joliet & Eastern Railroad Drawbridge will begin on July 08, 2011. This temporary safety zone is necessary to protect vessels from the hazards associated with those alteration efforts. The falling debris associated with the removal and replacement of the bridge spans poses a serious risk of injury to persons and property. As such, the Captain of the Port, Sector Lake Michigan, has determined that the alteration project of the Elgin Joliet & Eastern Railroad Drawbridge poses significant risks to public safety and property and that a safety zone is necessary.

Discussion of Rule

The safety zone will encompass all U.S. navigable waters of the Illinois River in the vicinity of the Elgin Joliet & Eastern Railroad Drawbridge between Mile Marker 270.1 and Mile Marker 271.5 of the Illinois River in Morris, IL. [DATUM: NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Lake Michigan, or his or her designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative. The Captain of the Port, Sector Lake Michigan, or his or her designated 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. The safety zone around the bridge project will be relatively small and exist for relatively short duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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 might be small entities: The owners or operators of vessels intending to transit or anchor on a portion of the Illinois River between 7 a.m. on July 08, 2011 and 7 a.m. on July 16, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced while unsafe conditions exist. Vessel traffic will be minimal due to the public and commercial outreach that has been made the by D8 Bridge Branch over the last 18 months.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could 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 affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

A final environmental analysis checklist and 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. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0584 to read as follows:

§ 165.T09–0584 Safety Zone; Truman-Hobbs alteration of the Elgin Joliet & Eastern Railroad Drawbridge, Morris, Illinois.

(a) *Location.* The safety zone will encompass all U.S. navigable waters of the Illinois River in the vicinity of the Elgin Joliet & Eastern Railroad Drawbridge between Mile Marker 270.1 and Mile Marker 271.5 of the Illinois River in Morris, IL. [DATUM: NAD 83].

(b) *Effective and enforcement period.* This rule is effective and will be enforced from 7 a.m. on July 8, 2011 until 7 a.m. on July 16, 2011. If the alteration project is completed before July 16, 2011, the Captain of the Port, Sector Lake Michigan, or his or her designated representative, may suspend the enforcement of this safety zone.

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

(2) This safety zone is closed to all vessel traffic, except as may be

permitted by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

(3) The ''designated representative'' of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The designated representative of the Captain of the Port, Sector Lake Michigan, will be on land in the vicinity of the safety zone and will have constant communications with the involved safety vessels that will be provided by the contracting company, James McHugh Construction, and will have communications with a D8 Bridge Branch representative, who will be on scene as well.

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

Dated: July 1, 2011.

M.W. Sibley,

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

[FR Doc. 2011–17802 Filed 7–14–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN83

Presumptive Service Connection for Diseases Associated With Service in the Southwest Asia Theater of Operations During the Persian Gulf War: Functional Gastrointestinal Disorders

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as a final rule the proposal to amend its adjudication regulations regarding presumptive service connection for medically unexplained chronic multisymptom illnesses associated with service in the Southwest Asia theater of operations for which there is no record during service. This amendment implements a decision by the Secretary that there is a positive association between service in Southwest Asia during certain periods and the subsequent development of functional gastrointestinal disorders (FGIDs) and clarifies that FGIDs fall within the scope of the existing presumptions of service connection for medically unexplained chronic multisymptom illnesses.

DATES: This final rule is effective August 15, 2011.

Applicability Date: This final rule shall apply to claims pending before, filed with or remanded to VA on or after August 15, 2011.

FOR FURTHER INFORMATION CONTACT: Nancy Copeland, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9685. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on November 17, 2010 (75 FR 70162–65), VA proposed to amend its adjudication regulations regarding the presumption of service connection for medically unexplained chronic multisymptom illnesses. The amendment clarifies VA's interpretation that FGIDs fall within the scope of the existing presumption of service connection for medically unexplained chronic multisymptom illnesses. This clarification is based on available scientific and medical evidence presented in the National Academy of Sciences' (NAS) April 2010 report titled: *Gulf War and Health, Volume 8: Update on the Health Effects of Serving in the Gulf War* (NAS 2010 Report) and the Secretary's determination that there is a positive association between service in Southwest Asia during certain periods and the subsequent development of FGIDs.

In response to the proposed rule, VA received eight (8) public comments. Of these comments, 5 expressed general support for the rulemaking. The sixth commenter expressed belief that ''presumptive service connection for gastrointestinal (GI) disorders and any gastroesophageal reflux disease (GERD) or ''bowel inflammatory conditions'' should be related to Gulf War service for the period 1990 through 1991 because of the ''hazardous chemical exposures known as a toxic bowl of soup.'' VA appreciates this comment; however, based on findings from the NAS 2010 report, the NAS Committee concluded that there is sufficient evidence for an association between deployment to the Southwest Asia theater of operations during the Gulf War and GI symptoms consistent with FGIDs such as irritable bowel syndrome and functional dyspepsia which involve ''recurrent or prolonged clusters of symptoms that occur together.'' NAS 2010 Report, at 154. By contrast, Inflammatory Bowel Disease (IBD), such as ulcerative colitis or Crohn's disease, and GERD are considered to be ''organic'' or structural diseases characterized by abnormalities seen on x-ray, endoscopy, or through laboratory tests. The NAS Committee concluded that there is inadequate/insufficient evidence to determine whether an association exists between deployment to the Southwest Asia theater of operations during the Gulf War and the development of structural gastrointestinal diseases, and NAS defines both IBD and GERD as structural gastrointestinal diseases. This rulemaking is limited to clarifying the scope of the presumption for FGIDs as medically unexplained chronic multisymptom illnesses. Therefore, we make no change based on this comment.

The seventh commenter expressed belief that noise and vibration exposure caused symptoms of various disorders, including intestinal disorders, among the ''Gulf War Seabees'' and that some also have neural damage as a result of vibration exposure. VA appreciates this comment; however, we make no changes based on this comment. This rule is intended to clarify the scope of the existing presumption of service connection for medically unexplained chronic multisymptom illnesses, which applies to all veterans who served in the Southwest Asia theater of operations during the Persian Gulf War irrespective of whether their illnesses can be shown to be linked to a specific cause in service, such as noise and vibration exposure. To the extent the commenter believes that noise and vibration exposure may cause FGIDs, no change to this rule is necessary, because the rule already provides a presumption of service connection for FGIDs in all Gulf War Veterans. To the extent the commenter believes presumptive service connection based on noise and vibration exposure is warranted for conditions other than medically unexplained chronic multisymptom illnesses, that matter is beyond the scope of this clarifying rule. We note that a Veteran who believes his or her injury, disease, or illness may be related to noise or vibration exposure in service may submit evidence of such effects in support of his or her claim for benefits and VA will consider that evidence in deciding the claim.

The eighth and final commenter advocated that VA broaden the scope of

the rule by adopting the same effective date standards established in *Nehmer* v. *United States Veterans' Administration,* CV–86–6160 TEH (N.D. Cal.). For the reasons explained below, we make no change based on this comment.

In *Nehmer,* based on circumstances unique to that case, a district court issued a series of orders requiring VA to readjudicate certain previously and finally denied claims of Vietnam Veterans and their survivors and, in some circumstances, to pay such claimants benefits retroactive to the date of their previously denied claims. VA has issued regulations at 38 CFR 3.816 to codify the requirements of the *Nehmer* court orders.

Pursuant to statute, when VA issues a final decision denying disability compensation for a condition, VA is, with one exception described below, prohibited from later awarding benefits retroactive to the date of the finally denied claim. 38 U.S.C. 5110. Claimants may seek to reopen their claims with new evidence or may seek a new decision based on an intervening change in law, but the effective date of awards in those circumstances generally may be no earlier than the date of the new claim or the effective date of the intervening change in law. *Id.;* 38 CFR 3.114, 3.400. Congress has authorized payment retroactive to the date of a previously and finally denied claim only in the limited circumstance where the prior final decision is shown to have been based on ''clear and unmistakable error'' of fact or law. *See* 38 U.S.C. 5109A and 7111.

The *Nehmer* court orders require VA in certain cases to pay benefits retroactive to the date of a previously denied claim, even if VA's prior decision did not involve clear and unmistakable error. The *Nehmer* court orders apply only to claims by certain Vietnam Veterans and their survivors based on disability due to herbicide exposure. Although VA is required to comply with the *Nehmer* court orders, VA has no independent authority to expand the court's orders or otherwise to pay retroactive benefits not authorized by statute. Accordingly, VA cannot in this rule authorize retroactive payments without regard to the effect of prior final decisions and without regard to the requirement for a showing of clear and unmistakable error in order to support such a retroactive award. Because existing statutes and regulations provide clear guidance concerning the effective dates of awards under this rule, we make no change to the rule based on this comment.

In this final rule we are making a change to subparagraph (*3*) to improve clarity and revising the note to subparagraph (*3*) to clarify concepts involving medically unexplained chronic multisymptom illnesses that comprise FGIDs and facilitate understanding of information relating to diagnosis of such disorders. Subparagraph (*3*) of the proposed rule stated that the disorders entitled to presumptive service connection are ''Functional gastrointestinal disorders, including, but not limited to irritable bowel syndrome and functional dyspepsia (excluding structural gastrointestinal diseases).'' 75 FR at 70165. We believe this language, in conjunction with information in the note to paragraph (a)(2)(i)(B)(*3*), which lists irritable bowel syndrome and functional dyspepsia as specific functional gastrointestinal disorders, is repetitive and unnecessary. We have therefore revised subparagraph (*3*) to remove the language regarding irritable bowel syndrome and functional dyspepsia. Secondly, the proposed rule included the following language in a note to paragraph (a)(2)(i)(B)(*3*): ''Functional gastrointestinal disorders are a group of conditions characterized by chronic or recurrent symptoms that were present for at least 6 months prior to diagnosis and have been currently active for 3 months, that are unexplained by any structural, endoscopic, laboratory, or other objective signs of disease or injury and that may be related to any part of the gastrointestinal tract. * * *'' We believe this language might be unclear as to when the 3-month period starts and what the difference is between the 6-month and 3-month periods. Established medical principles regarding these disorders generally require symptom onset at least 6 months prior to diagnosis and the presence of symptoms sufficient to diagnose the specific disorder at least 3 months prior to diagnosis. We have therefore revised the note to explain how a diagnosis of FGID is made.

Therefore, based on the rationale set forth in the proposed rule and this document, we are adopting the provisions of the proposed rule as a final rule with the changes discussed above.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

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

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

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this final rule are 64.109, Veterans

Compensation for Service-Connected Disability, and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on July 6, 2011, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Veterans, Vietnam.

Dated: July 12, 2011.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.317 by revising paragraph (a)(2)(i)(B)(*3*) and adding a note to paragraph (a)(2)(i)(B)(*3*) to read as follows:

§ 3.317 Compensation for certain disabilities due to undiagnosed illnesses.

(a) * * *

(2) * * *

(i) * * *

(B) * * *

(*3*) Functional gastrointestinal disorders (excluding structural gastrointestinal diseases).

Note to paragraph (a)(2)(i)(B)(*3*): Functional gastrointestinal disorders are a group of conditions characterized by chronic or recurrent symptoms that are unexplained by any structural, endoscopic, laboratory, or other objective signs of injury or disease and may be related to any part of the gastrointestinal tract. Specific functional gastrointestinal disorders include, but are not limited to, irritable bowel syndrome, functional dyspepsia, functional vomiting, functional constipation, functional bloating, functional abdominal pain syndrome, and functional dysphagia. These disorders are commonly characterized by symptoms including abdominal pain, substernal burning or pain, nausea, vomiting, altered bowel habits (including diarrhea, constipation), indigestion, bloating, postprandial fullness, and painful or difficult swallowing. Diagnosis of specific functional gastrointestinal disorders is made in accordance with established medical principles, which generally require symptom onset at least 6 months prior to diagnosis and the presence of symptoms sufficient to diagnose the specific disorder at least 3 months prior to diagnosis.

* * * * *

[FR Doc. 2011–17814 Filed 7–14–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2009–0647; FRL–9438–7]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Section 110(a)(2) Infrastructure Requirements for 1997 8-Hour Ozone and Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving submittals from the State of New Mexico pursuant to the Clean Air Act (CAA or Act) that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and 1997 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or standards). We are determining that the current New Mexico State Implementation Plan (SIP) meets the following infrastructure elements which were subject to EPA's completeness findings pursuant to CAA section 110(k)(1) for the 1997 8-hour ozone NAAQS dated March 27, 2008, and the 1997 $PM_{2.5}$ NAAQS dated October 22, 2008: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is also approving a November 2, 2006, SIP revision to regulation 20.2.3 of the New Mexico Administrative Code (NMAC) (*Ambient Air Quality Standards*), to remove the state ambient air quality standards from being an applicable requirement under the State's Title V permitting program, found at 20.2.70 NMAC (*Operating Permits*). EPA is also converting our February 27, 1987, conditional approval of New Mexico's PSD program (52 FR 5964) to a full approval based on the November 2, 1988, approval of New Mexico's stack height regulations (53 FR 44191). Lastly, EPA is making a number of U.S. Code of Federal Regulations (CFR) codification technical corrections to amend the description of the approved New Mexico SIP. This action is being taken under section 110 and part C of the Act.

DATES: This rule is effective on August 15, 2011.

ADDRESSES: EPA established a docket for this action under Docket ID No. EPA–R06–OAR–2009–0647. All documents in the docket are listed at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act (FOIA) Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. Please make the appointment at least two working days in advance of your visit. There is a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Ms. Dayana Medina, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7241; fax number 214–665–6762; e-mail address *medina.dayana@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means EPA.

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I. Background

The background for today's actions is discussed in detail in our May 2, 2011, proposal to approve submittals from the State of New Mexico pursuant to the CAA that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and 1997 fine particulate matter ($PM_{2.5}$) NAAQS (76 FR 24421). In it, we proposed to find that the current New Mexico SIP meets the provisions of the CAA sections 110(a)(1) and 110(a)(2) (i.e., 110(a)(2)(A)–(C), (D)(ii), (E)–(H), and (J)–(M)) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. We also proposed to approve a revision to regulation 20.2.3 NMAC (*Ambient Air Quality Standards*) into the New Mexico SIP, to remove the state ambient air quality standards from being an applicable requirement under the State's Title V permitting program. EPA also proposed to correct an administrative oversight by converting our February 27, 1987, conditional approval of New Mexico's PSD program (52 FR 5964) to a full approval based on the November 2, 1988, approval of New Mexico's stack height regulations (53 FR 44191), at which point New Mexico fully met the condition in the conditional approval. Lastly, EPA proposed to make several CFR codification technical corrections to amend the description of the approved New Mexico SIP.

Our May 2, 2011, proposal provides a detailed description of the revisions and the rationale for EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for these actions closed on June 1, 2011, and we did not receive any comments. For more information, please see our proposed rulemaking, at 76 FR 24421, the Technical Support Document, and other supporting documentation available in the electronic docket for this action at *http://www.regulations.gov* (Docket Identification No. EPA–R06–OAR–2009–0647).

II. Additional Background Information

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.[1] The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated that it would address the issues separately: (i) existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth with respect to these issues. EPA notes that we did not receive comments on these issues in response to our New Mexico proposal (76 FR 24421), but because of the concern raised in the context of action on other state infrastructure SIP submissions, EPA feels it important to further clarify our proposal.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision

[1] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPS are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[2] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[3]

Notwithstanding that section 110(a)(2) states that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[4] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[5] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[6]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirement applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[7] Within this

[2] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[3] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[4] See, e.g., Id., 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[5] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[6] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[7] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air

guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [8] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [9] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [10] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[11] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[12] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[13]

Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance''). EPA issued comparable guidance for the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T. Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[8] Id., at page 2.

[9] Id., at attachment A, page 1.

[10] Id., at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[11] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 (April 18, 2011).

[12] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[13] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including

Continued

III. What action is EPA taking?

EPA is approving the New Mexico SIP submittals dated December 10, 2007, and March 3, 2008, that identify where and how the 14 basic infrastructure elements are in the EPA-approved SIP as specified in section 110(a)(2) of the Act. We are determining that the following section 110(a)(2) elements are contained in the current New Mexico SIP: emission limits and other control measures (section 110(a)(2)(A)); ambient air quality monitoring/data system (section 110(a)(2)(B)); program for enforcement of control measures (section 110(a)(2)(C)); international and interstate pollution abatement (section 110(a)(2)(D)(ii)); adequate resources (section 110(a)(2)(E)); stationary source monitoring system (section 110(a)(2)(F)); emergency power (section 110(a)(2)(G)); future SIP revisions (section 110(a)(2)(H)); consultation with government officials (section 110(a)(2)(J)); public notification (section 110(a)(2)(J)); PSD and visibility protection (section 110(a)(2)(J)); air quality modeling/data (section 110(a)(2)(K)); permitting fees (section 110(a)(2)(L)); and consultation/participation by affected local entities (section 110(a)(2)(M)).

In conjunction with our determination that the New Mexico SIP meets the section 110(a)(1) and (2) infrastructure SIP elements listed above, we are also approving a severable portion of a SIP revision submitted by NMED to EPA on November 2, 2006. This portion of the submittal contains a revision to 20.2.3 NMAC (*Ambient Air Quality Standards*), adding a new subpart 9 to 20.2.3 NMAC, including language to ensure that sources being issued a permit under the State's minor source permitting program, found at 20.2.72 NMAC (*Construction Permits*), are required to continue to address the State's ambient air quality standards in their application. The revision also includes language in 20.2.3.9 NMAC that removes the state ambient air quality standards from being an applicable requirement under the State's Title V permitting program, found at 20.2.70 NMAC (*Operating Permits*). Because New Mexico's Title V permitting program is outside the scope of the New Mexico SIP, and has not been approved by EPA into the New Mexico SIP, approval of the revision to 20.2.3 NMAC is appropriate and will not constitute a relaxation of the current New Mexico SIP. EPA is approving the portion of the November 2, 2006 submittal that revises 20.2.3 NMAC, as indicated above, because it clarifies the permitting requirements under the New Mexico SIP. The revision to 20.2.3 NMAC we are approving into the SIP is severable from the other portions of the November 2, 2006 SIP submittal. At this time, EPA is not taking action on other portions of the November 2, 2006 SIP revision submitted by NMED; EPA intends to act on the other revisions at a later time.

EPA is also correcting an administrative oversight by now converting our February 27, 1987, conditional approval of New Mexico's PSD program (52 FR 5964), to a full approval based on our November 2, 1988, approval of New Mexico's stack height regulations (53 FR 44191). Upon our approval of New Mexico's stack height regulations on November 2, 1988, New Mexico had fully met all the conditions of EPA's February 27, 1987, conditional approval of the State's PSD program. However, due to an administrative oversight, EPA failed to convert the conditional approval of New Mexico's PSD program into a full approval at that time. The fact that EPA had not formally converted the conditional approval to a full approval until now had no impact on the State's authority to implement the PSD program in the interim.

Lastly, EPA is making four CFR codification technical corrections to amend the following: (1) the table titled ''*EPA Approved New Mexico Regulations,*'' found under 40 CFR 52.1620(c), by (i) deleting entries for part 70 (*Operating Permits*) and part 71 (*Operating Permit Emission Fees*) of 20.2 NMAC, and (ii) changing the EPA approval date for the recodification of New Mexico's air quality regulations in the SIP from the currently listed November 25, 1997 date to the correct date of September 26, 1997; (2) the table titled ''*EPA Approved Nonregulatory Provisions And Quasi-Regulatory Measures In The New Mexico SIP,*'' found under 40 CFR 52.1620(e), by including an entry for New Mexico's Air Pollution Episode Contingency Plan approved by EPA into the SIP on August 21, 1990; (3) 40 CFR 52.1634(a), by amending the paragraph such that it identifies that New Mexico has fully met all conditions of our February 27, 1987 conditional approval of New Mexico's PSD program such that our conditional approval is converted to a full approval; and (4) 40 CFR 52.1640(c)(66)(i)(B), by amending the paragraph such that it correctly identifies the State regulations submitted by the State and approved by EPA into the New Mexico SIP. We are making the above CFR corrections to make clear which New Mexico air quality regulations are currently approved into the New Mexico SIP and the EPA approval date of these regulations into the SIP.

IV. Final Action

We are approving the submittals provided by the State of New Mexico to demonstrate that the New Mexico SIP meets the following requirements of Section 110(a)(1) and (2) of the Act:

Emission limits and other control measures (110(a)(2)(A) of the Act);

Ambient air quality monitoring/data system (110(a)(2)(B) of the Act);

Program for enforcement of control measures (110(a)(2)(C) of the Act);

Interstate Transport (110(a)(2)(D)(ii) of the Act);

Adequate resources (110(a)(2)(E) of the Act);

Stationary source monitoring system (110(a)(2)(F) of the Act);

Emergency power (110(a)(2)(G) of the Act);

Future SIP revisions (110(a)(2)(H) of the Act);

Consultation with government officials (110(a)(2)(J) of the Act);

Public notification (110(a)(2)(J) of the Act);

Prevention of significant deterioration and visibility protection (110(a)(2)(J) of the Act);

Air quality modeling data (110(a)(2)(K) of the Act);

Permitting fees (110(a)(2)(L) of the Act); and

Consultation/participation by affected local entities (110(a)(2)(M) of the Act).

EPA is also approving a severable revision to regulation 20.2.3 NMAC (*Ambient Air Quality Standards*), which was submitted by New Mexico on November 2, 2006. The revision to 20.2.3 NMAC removes the state ambient air quality standards from being an applicable requirement under the State's Title V permitting program, found at 20.2.70 NMAC (*Operating Permits*). The revision also adds language to ensure that sources being issued a permit under the State's minor source permitting program, found at 20.2.72 NMAC (*Operating Permits*), are required to continue to address the State's ambient air quality standards in their application.

EPA is also formally converting our February 27, 1987, conditional approval of New Mexico's PSD program (52 FR 5964), to a full approval based on the November 2, 1988, approval of New Mexico's stack height regulations (53 FR 44191), at which point New Mexico fully met the condition in the conditional approval.

section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

Lastly, EPA is making CFR codification technical corrections to amend the following:

1. The table titled ''*EPA Approved New Mexico Regulations,''* found under 40 CFR 52.1620(c), by (i) deleting entries for part 70 (*Operating Permits*) and part 71 (*Operating Permit Emission Fees*) of 20.2 NMAC and (ii) changing the EPA approval date for the recodification of New Mexico's air quality regulations in the SIP from the currently listed November 25, 1997 date to the correct date of September 26, 1997.

2. The table titled ''*EPA Approved Nonregulatory Provisions And Quasi-Regulatory Measures In The New Mexico SIP,''* found under 40 CFR 52.1620(e), by including an entry for New Mexico's Air Pollution Episode Contingency Plan approved by EPA into the SIP on August 21, 1990.

3. 40 CFR 52.1634(a), by amending the paragraph such that it identifies that New Mexico has fully met all conditions of our February 27, 1987 conditional approval of New Mexico's PSD program such that our conditional approval is converted to a full approval.

4. 40 CFR 52.1640(c)(66)(i)(B), by amending the paragraph such that it correctly identifies the State regulations submitted by the State and approved by EPA into the New Mexico SIP.

EPA is approving these actions in accordance with section 110 of the Act and EPA's regulations and consistent with EPA guidance.

V. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 13, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 30, 2011.

Al Armendariz,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart GG—New Mexico

■ 2. Section 52.1620 is amended:

■ a. In paragraph (c), under the first table entitled ''New Mexico Administrative Code (NMAC) Title 20—Environmental Protection Chapter 2—Air Quality,'' by removing the entries for Part 70 and Part 71 and by revising the entries for Part 2, Part 3, Part 5, Part 8, Part 10, Part 11 through Part 22, Part 30 through Part 34, Part 40, Part 41, Part 60, Part 61, Part 72, Part 75, and Part 80;

■ b. In paragraph (e), under the second table entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures In The New Mexico SIP,'' by adding to the end of the table a new entry for ''Air Pollution Episode Contingency Plan for New Mexico'' followed by a new entry for ''Infrastructure for the 1997 Ozone and 1997 PM2.5 NAAQS''.

The amendments and additions read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20—Environmental Protection Chapter 2—Air Quality				
* *	*	*	* *	*
Part 2	Definitions	11/30/1995	9/26/1997, 62 FR 50514	
Part 3	Ambient Air Quality Standards	9/6/2006	7/15/11, [Insert *FR* page number where document begins].	
Part 5	Source Surveillance	11/30/1995	9/26/1997, 62 FR 50514	
* *	*	*	* *	*
Part 8	Emissions Leaving New Mexico	11/30/1995	9/26/1997, 62 FR 50514	
Part 10	Woodwaste Burners	11/30/1995	9/26/1997, 62 FR 50514	
Part 11	Asphalt Process Equipment	11/30/1995	9/26/1997, 62 FR 50514	
Part 12	Cement Kilns	11/30/1995	9/26/1997, 62 FR 50514	
Part 13	Gypsum Processing Plants	11/30/1995	9/26/1997, 62 FR 50514	
Part 14	Particulate Emissions From Coal Burning Equipment.	11/30/1995	9/26/1997, 62 FR 50514	
Part 15	Pumice, Mica and Perlite Process Equipment.	11/30/1995	9/26/1997, 62 FR 50514	
Part 16	Nonferrous Smelters (New and Existing)-Particulate Matter.	11/30/1995	9/26/1997, 62 FR 50514	
Part 17	Nonferrous Smelters (Existing)-Particulate Matter.	11/30/1995	9/26/1997, 62 FR 50514	
Part 18	Oil Burning Equipment-Particulate Matter.	11/30/1995	9/26/1997, 62 FR 50514	
Part 19	Potash, Salt, or Sodium Sulfate Processing Equipment-Particulate Matter.	11/30/1995	9/26/1997, 62 FR 50514	
Part 20	Lime Manufacturing Plants-Particulate Matter.	11/30/1995	9/26/1997, 62 FR 50514	
Part 21	Fugitive Particulate Matter Emissions from Nonferrous Smelters.	11/30/1995	9/26/1997, 62 FR 50514	
Part 22	Fugitive Particulate Matter Emissions from Roads within the Town of Hurley.	11/30/1995	9/26/1997, 62 FR 50514	
Part 30	Kraft Mills	11/30/1995	9/26/1997, 62 FR 50514	
Part 31	Coal Burning Equipment-Sulfur Dioxide.	11/30/1995	9/26/1997, 62 FR 50514	
Part 32	Coal Burning Equipment-Nitrogen Dioxide.	11/30/1995	9/26/1997, 62 FR 50514	
Part 33	Gas Burning Equipment-Nitrogen Dioxide.	11/30/1995	9/26/1997, 62 FR 50514	
Part 34	Oil Burning Equipment-Nitrogen Dioxide.	11/30/1995	9/26/1997, 62 FR 50514	
Part 40	Sulfuric Acid Production Units-Sulfur Dioxide, Acid Mist and Visible Emissions.	11/30/1995	9/26/1997, 62 FR 50514	
Part 41	Nonferrous Smelters-Sulfur	11/30/1995	9/26/1997, 62 FR 50514	
Part 60	Open Burning	11/30/1995	9/26/1997, 62 FR 50514	
Part 61	Smoke and Visible Emissions	11/30/1995	9/26/1997, 62 FR 50514	
Part 72	Construction Permits	11/30/1995	9/26/1997, 62 FR 50514	Subparts I, II, III, and V in SIP.
* *	*	*	* *	*
Part 75	Construction Permit Fees	11/30/1995	9/26/1997, 62 FR 50514	
* *	*	*	* *	*
Part 80	Stack Heights	11/30/1995	9/26/1997, 62 FR 50514	
* *	*	*	* *	*

* * * * *

(e) * * *

* * * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	*	*	*	*
Air Pollution Episode Contingency Plan for New Mexico.	Statewide	7/7/1988	8/21/1990, 55 FR 34013	
Infrastructure for the 1997 Ozone and 1997 $PM_{2.5}$ NAAQS.	Statewide	12/10/2007 3/3/2008	7/15/11, [Insert *FR* page number where document begins].	Approval for 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

■ 3. Section 52.1634 is amended by revising paragraph (a) to read as follows:

§ 52.1634 Significant deterioration of air quality.

(a) The plan submitted by the Governor of New Mexico on February 21, 1984 (as adopted by the New Mexico Environmental Improvement Board (NMEIB) on January 13, 1984), August 19, 1988 (as revised and adopted by the NMEIB on July 8, 1988), and July 16, 1990 (as revised and adopted by the NMEID on March 9, 1990), Air Quality Control Regulation 707—Permits, Prevention of Significant Deterioration (PSD) and its Supplemental document, is approved as meeting the requirements of part C, Clean Air Act for preventing significant deterioration of air quality. Additionally, on November 2, 1988, EPA approved New Mexico's stack height regulation into the SIP (53 FR 44191), thereby satisfying the conditions of EPA's conditional approval of the State's PSD program on February 27, 1987 (52 FR 5964). Therefore, the conditional approval was converted to a full approval on July 15, 2011.

* * * * *

■ 4. Section 52.1640 is amended by revising paragraph (c)(66)(i)(B) to read as follows:

§ 52.1640 Original identification of plan section.

* * * * *

(c) * * *

(66) * * *

(i) * * *

(B) New Mexico Administrative Code, Title 20, Chapter 2, Parts 3, 5, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 30, 31, 32, 33, 34, 40, 41, 60, 61, 72 (Subparts I, II and III; Subpart V, Sections 501 and 502), 73, 75, 79, and 80; adopted by the New Mexico Environmental Improvement Board on October 20, 1995, and filed with the State Records and Archives Center on October 30, 1995.

* * * * *

[FR Doc. 2011–17786 Filed 7–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–2011–NY1, FRL–9430–3]

Approval and Promulgation of Implementation Plans; New York; Revised Format of Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is revising the format of materials submitted by the State of New York that have been incorporated by reference (IBR) into its State Implementation Plan (SIP). The regulations and other materials affected by this format change have all been previously submitted by New York and approved by EPA as SIP revisions.

This format revision will primarily affect the ''Identification of plan'' section of regulation, as well as the format of the SIP materials that will be available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Region 2 Office. EPA is also adding a table in the ''Identification of plan'' section, which summarizes the approval actions that EPA has taken on the regulatory and non-regulatory portions of the New York SIP. The sections of regulation pertaining to provisions promulgated by EPA, and state-submitted materials not subject to IBR review, remain unchanged.

DATES: *Effective Date:* This final rule is effective on July 15, 2011.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/*Telephone number:* (202) 566–1742. For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

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I. Background

A. Description of a SIP

In accordance with Section 110 of the Clean Air Act (Act), 42 U.S.C. 7410, each state has a SIP containing the control measures and strategies to attain and maintain the National Ambient Air Quality Standards (NAAQS) established pursuant to Section 109 of the Act, 42 U.S.C. 7409. SIPs contain numerous elements such as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

B. How EPA Enforces SIPs

Before formally adopting rules that contain required control measures and strategies as part of a SIP, each state must provide the public with an opportunity to comment on them. The states then submit these rules to EPA as requested SIP revisions, on which EPA must formally act.

If and when these control measures and strategies are approved by EPA after notice and comment rulemaking, they become enforceable by EPA, and are incorporated into the federally approved SIP and identified in title 40 of the Code of Federal Regulations, part 52 (Approval and Promulgation of Implementation Plans) (40 CFR part 52). The actual state regulations approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are ''incorporated by reference,'' which has the same effect as including the entire state regulation in part 52. Incorporation by reference indicates that EPA has approved a given state regulation with a specific effective date, and that EPA, in addition to the state, may enforce that regulation once it takes effect and is formally a part of the SIP. This format allows both EPA and the public to know which state measures are contained in a given SIP and are therefore federally enforceable. It also helps identify the specific requirements that the state is implementing to attain and maintain the NAAQS.

C. How the State and EPA Update the SIP

The SIP is periodically revised as necessary to address the specific or unique air pollution problems in the state. Therefore, EPA from time to time takes action on state SIP submissions containing new and/or revised regulations and other materials; if approved, they become part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally approved SIPs, as a result of consultations between EPA and the Office of the **Federal Register** (OFR).

As a result, EPA began the process of developing the following: (1) A revised SIP document for each state that would be incorporated by reference under the provisions of title 1 CFR part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and (3) a revised format of the ''Identification of plan'' sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures, and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

D. How EPA Compiles the SIP

The federally approved regulations, source-specific requirements, and nonregulatory provisions (entirely or portions of) submitted by each state agency and approved by EPA have been organized into a ''SIP compilation.'' The compilation is contained in three-ring binders and will be updated, primarily on an annual basis. The New York SIP compilation is available at the Environmental Protection Agency, Region 2 Office: 290 Broadway, New York, New York 10007; (212) 637–4249.

E. How EPA Organizes the SIP Compilation

Each SIP compilation contains three parts approved by EPA: part one contains regulations, part two contains source-specific requirements, and part three contains nonregulatory provisions. Each state's SIP compilation contains a table of identifying information for each of these three parts. In this action, EPA is publishing the tables summarizing the applicable SIP requirements for New York. The effective dates in the tables indicate the date of the most recent state revision of each regulation. The EPA Region 2 Office has the primary responsibility for updating the compilation and ensuring its accuracy.

F. Where You Can Find a Copy of the SIP Compilation

EPA's Region 2 Office developed and will maintain the compilation for New York. A copy of the full text of New York's regulatory and source-specific compilations will also be maintained at NARA and EPA's Air Docket and Information Center.

G. The Format of the New Identification of Plan Section

In order to better serve the public, EPA revised the organization of the ''Identification of plan'' section and included additional information to clarify which provisions are the enforceable elements of the SIP. The revised Identification of plan section contains five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA-approved regulations, (d) EPA-approved source-specific requirements, and (e) EPA-approved nonregulatory provisions such as transportation control measures, statutes, control strategies, and monitoring networks.

H. When a State Submission Becomes Part of the SIP and Federally Enforceable

All revisions to the applicable SIP become federally enforceable as of the effective date of the revisions to paragraphs (c), (d), or (e) of the applicable Identification of plan section found in each subpart of 40 CFR part 52.

I. The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP compilation, EPA has retained the original Identification of plan section, previously appearing in the CFR as the first or second section of part 52 for each state subpart. After an initial two-year period, EPA will review its experience with the new table format and will decide whether or not to retain the historical Identification of plan appendices for some further period.

II. What is EPA doing in this action?

Today's rule constitutes a reformatting exercise to ensure that all revisions to the state programs and accompanying SIP that have already occurred are accurately reflected in 40 CFR part 52. State SIP revisions are subject to the EPA regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish its proposed rulemaking in the **Federal Register** and provide for public comment before approval.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation, and section 553(d)(3), which allows an agency to make a rule effective immediately, thereby avoiding the 30-day delayed effective date otherwise provided for in the APA. Today's rule simply reorganizes and codifies provisions that are already in effect as a matter of law in Federal and approved state programs. Accordingly, we find that public

comment is ''unnecessary'' and ''contrary to the public interest'' under section 553 of the APA, since the reorganization and codification of the revised format for denoting IBR of the state materials into the SIP only reflects existing law and since immediate notice in the CFR benefits the public by removing outdated citations from the CFR.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a significant regulatory action and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a good cause finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in previous actions taken on the State's rules.

B. Submission to Congress and the Comptroller General

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 15, 2011. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the New York SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for these ''Identification of plan'' reorganization actions for New York.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 1, 2011.

Judith A. Enck,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart HH—New York

§ 52.1670 [Redesignated as § 52.1689]

■ 2. Section 52.1670 is redesignated as § 52.1689.

■ 3. In newly designated § 52.1689 the section heading and paragraph (a) are revised to read as follows:

§ 52.1689 Original Identification of plan section.

(a) This section identifies the original ''Air Implementation Plan for the State of New York'' and all revisions submitted by New York that were Federally approved prior to January 1, 2011.

* * * * *

■ 4. A new § 52.1670 is added to read as follows:

§ 52.1670 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State Implementation Plan (SIP) for New York under section 110 of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.,* and 40 CFR part 51 to meet National Ambient Air Quality Standards.

(b) *Incorporation by reference.*

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to January 1, 2011, was approved for incorporation by reference by the Director of the **Federal**

Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with an EPA approval date after January 1, 2011, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 2 certifies that the rules/regulations provided by the EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations, which have been approved as part of the SIP as of January 1, 2011.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, New York, New York 10007; the EPA, Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566–1742. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) *EPA approved regulations.*

EPA-APPROVED NEW YORK STATE REGULATIONS

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6:			
Part 200, General Provisions, Section 200.1.	3/5/09	11/17/10, 75 FR 70140	The word odor is removed from the Subpart 200.1(d) definition of ''air contaminant or air pollutant.'' Redesignation of non-attainment areas to attainment areas (200.1(av)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC. Changes in definitions are acceptable to EPA unless a previously approved definition is necessary for implementation of an existing SIP regulation. EPA is including the definition of ''Federally enforceable'' with the understanding that (1) the definition applies to provisions of a Title V permit that are correctly identified as Federally enforceable, and (2) a source accepts operating limits and conditions to lower its potential to emit to become a minor source, not to ''avoid'' applicable requirements.
Section 200.9, Table 1 (Part 231 references).	3/5/09	11/17/10, 75 FR 70140	EPA is approving reference documents that are not already Federally enforceable.
Sections 200.6, 200.7 and 200.9	2/25/00	4/22/08, 73 FR 21548	EPA is approving reference documents that are not already Federally enforceable.
Part 201, Permits and Certificates	4/4/93	10/3/05, 70 FR 57511	This action removes subpart 201.5(e) from the State's Federally approved SIP.
Subpart 201–2.1(b)(21), Definitions	3/5/09	11/17/10, 75 FR 70140	EPA is including the definition of ''Major stationary source or major source or major facility'' with the understanding that the definition applies only to provisions of part 231.
Subpart 201–7.1, General	7/7/96	10/3/05, 70 FR 57511	
Subpart 201–7.2, Emission Capping Using Synthetic Minor Permits.	7/7/96	10/3/05, 70 FR 57511	
Part 202, Emissions Testing, Sampling and Analytical Determinations.	3/24/79	11/12/81, 46 FR 55690	
Subpart 202–2, Emission Statements	5/29/05	10/31/07, 72 FR 61530	Section 202–2.3(c)(9) requires facilities to report individual HAPs that may not be classified as criteria pollutants or precursors to assist the State in air quality planning needs. EPA will not take SIP-related enforcement action on these pollutants.
Part 204, NO_X Budget Trading Program	2/25/00	5/22/01, 66 FR 28063	Incorporates NO_XSIP Call and NO_X Budget Trading Program for 2003 and thereafter.
Part 205, Architectural and Industrial Maintenance Coatings.	11/22/03	12/13/04, 69 FR 72118	
Part 207, Control Measures for an Air Pollution Episode.	2/22/79	11/12/81, 46 FR 55690	
Part 211, General Prohibitions	8/11/83	11/27/98, 63 FR 65559	Section 211.2 has been removed from the approved plan.
Part 212, General Process Emission Sources.	9/22/94	9/25/01, 66 FR 48961	
Part 213, Contaminant Emissions from Ferrous Jobbing Foundries.	5/1/72	9/22/72, 37 FR 19814	
Part 214, By-Product Coke Oven Batteries.	9/22/94	7/20/06, 71 FR 41163	
Part 215, Open Fires	6/16/72	9/22/72, 37 FR 19814	
Part 216, Iron and/or Steel Processes	9/22/94	7/20/06, 71 FR 41163	

EPA-APPROVED NEW YORK STATE REGULATIONS—Continued

New York State regulation	State effective date	Latest EPA approval date	Comments
Part 217, Motor Vehicle Emissions.			
Subpart 217–1, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements.	10/30/02	2/21/07, 72 FR 7829	
Subpart 217–4, Inspection and Maintenance Program Audits.	10/30/02	2/21/07, 72 FR 7829	
Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines.			EPA's approval of part 218 only applies to light-duty vehicles.
Subpart 218–1: Applicability and Definitions.	12/28/00	1/31/05, 70 FR 4773	
Subpart 218–2: Certification and Prohibitions.	12/28/00	1/31/05, 70 FR 4773	
Subpart 218–3: Fleet Average	12/28/00	1/31/05, 70 FR 4773	
Subpart 218–4: Zero Emissions Vehicle Sales Mandate.	5/28/92	1/6/95, 60 FR 2025	
Subpart 218–5: Testing	12/28/00	1/31/05, 70 FR 4773	
Subpart 218–6: Surveillance	12/28/00	1/31/05, 70 FR 4773	
Subpart 218–7: Aftermarket Parts	12/28/00	1/31/05, 70 FR 4773	
Subpart 218–8: Severability	12/28/00	1/31/05, 70 FR 4773	
Part 219, Incinerators	5/1/72	9/22/72, 37 FR 19814	
Part 220, Portland Cement Plants	3/14/73	11/12/81, 46 FR 55690	
Part 222, Incinerators—New York City, Nassau and Westchester Counties.	6/17/72	9/22/72, 37 FR 19814	
Part 223, Petroleum Refineries	8/9/84	7/19/85, 50 FR 29382	
Part 224, Sulfuric and Nitric Acid Plants	5/10/84	7/19/85, 50 FR 29382	Variances adopted by the State pursuant to Part 224.6(b) become applicable only if approved by EPA as SIP revisions 7/19/85, 50 FR 29382.
Subpart 225–1, Fuel Composition and Use-Sulfur Limitations.	3/24/79	11/12/81, 46 FR 55690	Variances adopted by the State pursuant to §§ 225.2(b) and (c), 225.3, and 225.5(c) become applicable only if approved by EPA or SIP revisions (40 CFR 52.1675(e)).
Subpart 225–2, Fuel Composition and Use-Waste Fuel.	7/28/83	8/2/84, 49 FR 30936	
Part 225–3, Fuel Composition and Use—Gasoline.	11/4/01	9/8/05, 70 FR 53304	The Variance adopted by the State pursuant to section 225–3.5 becomes applicable only if approved by EPA as a SIP revision.
Part 226, Solvent Metal Cleaning Processes.	5/7/03	1/23/04, 69 FR 3240	
Part 227, Stationary Combustion Installations [1972 version]/section 227.2(b)(1).	5/1/72	9/22/72, 37 FR 19814	
Part 227, Stationary Combustion Installations.			Existing Part 227 is renumbered Subpart 227–1.
Subpart 227–1, Stationary Combustion Installations.	2/25/00	5/22/01, 66 FR 28063	Renumbered sections 227–1.2(a)(2), 227–1.4(a), and 227–1.4(d) continue to be disapproved according to 40 CFR 52.1678(d) and 52.1680(a). (New York repealed existing Part 227.5.)
Subpart 227–2, Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_X).	2/11/04	1/13/05, 70 FR 2358	
Subpart 227–3, Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program.	3/5/99	5/22/01, 66 FR 28063	Approval of NO_X Budget Trading Program for 1999, 2000, 2001 and 2002. NO_X caps in the State during 2003 and thereafter established in Part 204.
Part 228, Surface Coating Processes	7/23/03	1/23/04, 69 FR 3240	
Part 229, Petroleum and Volatile Organic Liquid Storage and Transfer.	4/4/93	12/23/97, 62 FR 67006	SIP revisions submitted in accordance with Section 229.3(g)(1) are effective only if approved by EPA.
Part 230, Gasoline Dispensing Sites and Transport Vehicles.	9/22/94	4/30/98, 63 FR 23668	
Part 231, New Source Review for New and Modified Facilities.	3/5/09	11/17/10, 75 FR 70140	Partial approval; no action taken on provisions that may require PSD permits for sources of greenhouse gas (GHG) emissions with emissions below the thresholds identified in EPA's final PSD and Title V GHG Tailoring Rule at 75 FR 31514, 31606 (June 3, 2010).
Part 232, Dry Cleaning	8/11/83	6/17/85, 50 FR 25079	EPA has not determined that § 232.3(a) provides for reasonably available control technology.

EPA-APPROVED NEW YORK STATE REGULATIONS—Continued

New York State regulation	State effective date	Latest EPA approval date	Comments
Part 233, Pharmaceutical and Cosmetic Manufacturing Processes.	4/4/93	12/23/97, 62 FR 67006	SIP revisions submitted in accordance with Section 223.3(h)(1) are effective only if approved by EPA.
Part 234, Graphic Arts	4/4/93	12/23/97, 62 FR 67006	SIP revisions submitted in accordance with Section 234.3(f)(1) are effective only if approved by EPA.
Part 235, Consumer Products	10/15/09	5/28/10, 75 FR 29897	
Part 236, Synthetic Organic Chemical Manufacturing Facility Component Leaks.	1/12/92	7/27/93, 58 FR 40059	Variances adopted by the State pursuant to Part 236.6(e)(3) become applicable only if approved by EPA as a SIP revision.
Part 239, Portable Fuel Container Spillage Control.	7/30/09	5/28/10, 75 FR 29897	The specific application of provisions associated with alternate test methods, variances and innovative products, must be submitted to EPA as SIP revisions.
Part 243, CAIR NO_X Ozone Season Trading Program.	10/19/07	1/24/08, 73 FR 4112	
Part 244, CAIR NO_X Annual Trading Program.	10/19/07	1/24/08, 73 FR 4112	
Part 245, CAIR SO_2Trading Program	10/19/07	1/24/08, 73 FR 4112	
Title 15:			
Part 79, Motor Vehicle Inspection Regulations, Sections 79.1–79.15, 79.17, 79.20, 79.21, 79.24, 79.25.	5/4/05	2/21/07, 72 FR 7829	

(d) *EPA approved State source-specific requirements.*

EPA-APPROVED NEW YORK SOURCE-SPECIFIC PROVISIONS

Name of source	Identifier/emission point	State effective/approval date	EPA approval date	Explanation
Dunlop Tire and Rubber Corporation.	Green tire spraying, bead dipping, and under tread and tread end cementing processes.	Consent Order [81–36, 9–0420]—8/19/81, Consent Order Amendment letters—1/29/82 and 3/3/82.	1/26/84, 49 FR 3436	Part 212 VOC RACT Compliance Plan.
Morton International Inc..	00027	Permit—9/1/95 Special Permit Conditions letter—8/23/95.	9/23/97, 62 FR 49617	Part 227–2, NO_X RACT determination.
University of Rochester.	00003 and 00005	Permit—4/25/96 Special Permit Conditions letter—. 3/19/96	9/23/97, 62 FR 49617	Part 227–2, NO_X RACT determination.
Algonquin Gas Transmission Company.		Special Conditions—9/23/91	9/23/97, 62 FR 49617	Part 227–2, NO_X RACT determination.
		Permit Correction—8/8/96		
	R0100	Permit—9/23/91, Special Permit Conditions letter—. 3/18/96		
	R0200	Permit—9/23/91, Special Permit Conditions letter—. 3/18/96		
	R0300	Permit—9/23/91, Special Permit Conditions letter—. 3/18/96		
	R0400	Permit—9/23/91, Special Permit Conditions letter—. 3/29/96,		
Tenneco Gas Corporation's (also known as Tenneco Gas Pipeline Company and Tennessee Gas Pipeline Company).			7/21/03, 68 FR 42981	Part 227–2, NO_X RACT determination.

EPA-APPROVED NEW YORK SOURCE-SPECIFIC PROVISIONS—Continued

Name of source	Identifier/emission point	State effective/approval date	EPA approval date	Explanation
Station 229	0001A through 0006A.	Permits—8/22/95		
Station 245	00001 through 00006.	Special Permit Conditions letter—2/24/97.		
Station 254	00001 through 00006.	Permits—10/4/95 Special Permit Conditions letter—. 9/15/95		
General Chemical Corporation.	0SN1A and 0SN1B	Permit conditions letter—12/16/97	7/1/04, 69 FR 39858	Part 212, NO_X RACT determination. 6/23/05 letter informing NYDSDEC that the approval will automatically convert to a disapproval.

(e) *EPA approved nonregulatory and quasi-regulatory provisions.*

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
SIP revision for carbon monoxide concerning the oxyfuel program.	New York-Northern New Jersey-Long Island carbon monoxide nonattainment area.	8/30/99	4/19/00, 65 FR 20909	
Stage II gasoline vapor recovery comparability plan.	Upstate portions of New York State	4/18/00	9/29/00, 65 FR 58364	
The 1990 base year emission inventory (Volatile organic compounds (VOC), Nitrogen oxides (NO_X) and Carbon monoxide (CO)).	Areas designated nonattainment for ozone since 1991 in New York State.	2/2/99	5/10/01, 66 FR 23851	
1996 and 1999 ozone projection year emission inventories.	New York portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area.	2/2/99	5/10/01, 66 FR 23851	
Photochemical assessment monitoring stations network.	New York portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area.	2/2/99	5/10/01, 66 FR 23851	
Enforceable commitments for ozone	New York portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area.	2/2/99	5/10/01, 66 FR 23851	
15 Percent Rate of Progress Plan and the 9 Percent Reasonable Further Progress Plan for ozone.	New York portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area.	2/2/99	5/10/01, 66 FR 23851	
2002, 2005 and 2007 ozone projection year emission inventories.	New York portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area.	11/27/98	2/4/02, 67 FR 5194	
Reasonable Further Progress Plans for milestone years 2002, 2005 and 2007 for ozone.	New York portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area.	11/27/98	2/4/02, 67 FR 5194	
Contingency measures for ozone	New York portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area.	11/27/98	2/4/02, 67 FR 5194	
Reasonably Available Control Measure Analysis for ozone.	New York portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area.	10/1/01	2/4/02, 67 FR 5194	
Attainment demonstration for ozone	New York portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area.	11/27/98, supplemented on 4/15/99, and 4/18/00	2/4/02, 67 FR 5194	
Enforceable commitments for future actions associated with attainment of the 1-hour ozone national ambient air quality standard.	New York portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area.	4/18/00	2/4/02, 67 FR 5194	
SIP revision to the carbon monoxide maintenance plan.	Onondaga County	6/22/04	9/8/05, 70 FR 53304	
1990 and 2007 conformity emission budgets for ozone.	New York portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area.	1/29/03, amended on 6/29/03 and 1/18/05	9/13/05, 70 FR 53944	

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
Revised commitment to perform a mid-course review for ozone.	New York portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area.	1/29/03	9/13/05, 70 FR 53944	
New York reasonably available control technology (RACT) analysis for ozone.	Statewide and to the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT and the Poughkeepsie 8-hour ozone moderate nonattainment areas.	9/1/06, supplemented on 2/8/08 and 9/16/08	7/23/10, 75 FR 43069	
Reasonably available control measure (RACM) analysis for ozone.	New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT 8-hour ozone moderate nonattainment area.	2/8/08	7/23/10, 75 FR 43069	

§ 52.1679 [Reserved]

■ 5. Section 52.1679 is removed and reserved.

[FR Doc. 2011–17782 Filed 7–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–0927; FRL–9428–9]

Approval, Disapproval, and Promulgation of Air Quality Implementation Plans; Utah; Revisions to New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving revisions to the State of Utah's Clean Air Act (CAA) State Implementation Plan (SIP). Utah has a federally-approved Prevention of Significant Deterioration (PSD) preconstruction permit program for new and modified sources impacting attainment areas in the State. Utah requested approval of its revised rules to implement the non-vacated provisions of EPA's New Source Review (NSR) Reform regulations. EPA proposed approval of these rules on January 7, 2009 and received adverse comments. In this action, EPA responds to these comments and announces EPA's final rulemaking action. This action affects major stationary sources in Utah that are subject to or potentially subject to the PSD preconstruction permit program. This action is being taken under section 110 of the CAA.

DATES: This action is effective on August 15, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R08–OAR–2007–0927. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 8, Air Quality Planning Unit (8P–AR), 1595 Wynkoop Street, Denver, Colorado 80202. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7814, or *ostendorf.jody@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used, we mean EPA. Information is organized as follows:

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2. Section 193
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II. Final Action
A. Rules To Approve Into the Utah SIP
B. Rules To Disapprove and Therefore Not Incorporate Into the Utah SIP
C. Scope of Action
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I. Background for This Action

Title I of the CAA, as amended by Congress in 1990, specifies the general requirements for states to submit SIPs to attain and/or maintain the National Ambient Air Quality Standards (NAAQS) and EPA's actions regarding approval of those SIPs. SIPs must include, among other requirements, an NSR preconstruction permit program, which, for attainment areas, meets federal PSD requirements.

On February 12, 1982, EPA approved into the Utah SIP PSD permitting regulations. On December 31, 2002, EPA published revisions to the federal PSD and non-attainment NSR regulations in 40 CFR parts 51 and 52 (67 FR 80186). These revisions are commonly referred to as the ''NSR Reform'' regulations and became effective nationally in areas not covered by a SIP on March 3, 2003. For information on subsequent court decisions and regulatory revisions to these rules, see *http://www.epa.gov/nsr.*

On September 15, 2006, October 1, 2007, and March 7, 2008, the Utah Department of Environmental Quality (DEQ) submitted numerous rule changes and requested that the Utah SIP be revised to reflect those changes. These changes include revisions to Utah's Rule R307–405 (''Permits: Major Sources in Attainment or Unclassified Areas (PSD)'') and to Utah's Rule R307–110–9 (''Section VIII, Prevention of Significant Deterioration of the Utah Air Quality Rules'').

On January 7, 2009 EPA proposed to partially approve and partially disapprove the revisions submitted by the Utah DEQ. 74 FR 667 (January 7,

2009). This final action will update the federally approved SIP to reflect those changes made by Utah DEQ that EPA has reviewed and deemed approvable into the Utah SIP (Code of Federal Regulations, Title 40, part 52, subpart TT).

A. What revisions to the Utah SIP does this action address?

We are partially approving revisions to R307–405 (''Permits: Major Sources in Attainment or Unclassified Areas (PSD)'') and approving revisions to R307–110–9 (''Section VIII, Prevention of Significant Deterioration of the Utah Air Quality Rules''). EPA is disapproving R307–405–3.(3)(a)(i) because it defines ''Major Source Baseline Date'' in a manner inconsistent with the federal definition found at 40 CFR 52.21(b)(14). In all other respects we are approving the State's March 7, 2008 submitted revisions to R307–405, and the State's September 15, 2006 submitted revisions to R307–110–9. More information about each SIP submittal, including a summary of the submittal and relevant background information and analysis supporting our action, can be found in our proposed rule. 74 FR 667 (January 7, 2009).

B. What comments did we receive on our proposal for these revisions?

The Natural Resources Defense Council (NRDC) commented on EPA's proposal to approve changes to Utah's permitting programs for major stationary sources, specifically the PSD permit program and the nonattainment area (Part D) permit program that incorporate EPA's ''2002 NSR Reform Rules.'' NRDC primarily commented on the requirements of the Federal NSR rules, not Utah's application of the Federal requirements in its own rules. Notably, NRDC participated in litigation challenging EPA's promulgation of the 2002 NSR Reform Rules, where similar arguments were made by NRDC and rejected by the DC Circuit Court. *See New York* v. *EPA,* 413 F.3d 3 (D.C. Cir. 2005). Many of NRDC's comments in this action, including exhibits, do not raise any specific concerns with Utah's rules, but rather, reiterate arguments that NRDC made to the court regarding EPA's 2002 NSR Reform Rules and the requirements of Sections 110(l) and 193 of the CAA.

Although NRDC's comments cite nine sections of the Utah rules, the comments make no attempt to specifically explain or demonstrate how those identified provisions are inconsistent with either Section 110(l) or Section 193 of the CAA. Furthermore, NRDC provides no evidence supporting its allegations that approval of the specific provisions would result in a violation of the CAA. The NRDC comments include a list of 31 exhibits which the comment letter incorporates by reference into the comments. The 31 exhibits appear to stem from the *New York* v. *EPA* litigation, and were either submitted to that Court for review, or are relevant to that adjudication. In any event, none of the 31 exhibits provides EPA with any comments specific to the Utah rules at issue. NRDC does note that the *New York* v. *EPA* decision addressed EPA's regulations, rather than state regulations submitted under section 110 of the CAA, and that the Court of Appeals had no occasion to decide whether EPA could approve a particular state's implementation of the NSR Reform Rules consistent with Sections 110(l) and 193 of the CAA. EPA's responses to NRDC's comments regarding Sections 110(l) and 193 are below.

1. Section 110(l)

a. Summary of Comments Regarding Section 110(l):

NRDC asserts that ''[t]he 2002 NSR Reform Rule provisions that were not vacated by the DC Circuit in *New York* v. *EPA* allow previously-prohibited emissions increases to occur.'' As a result, NRDC states that ''it cannot be said of Utah's plan that it 'will cause no degradation of air quality'" and ''Utah has made no 'demonstration that the emissions that are allowed by its revised rule but are prohibited by the current SIP would not interfere with attainment or other applicable requirements.'" Further, NRDC states that ''EPA has never made, or even proposed to make, a finding that revising Utah's permit provisions so that they track the non-vacated provisions of the 2002 rule'' would be consistent with Section 110(l) of the CAA.

b. EPA Response to Section 110(l)-Related Comments:

Section 110(l) of the CAA states that ''[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of this chapter.'' 42 U.S.C. 7410(l). EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved. Generally, a SIP revision may be approved under section 110(l) if EPA finds it will at least preserve status quo air quality. See *Kentucky Resources Council, Inc.* v. *EPA,* 467 F.3d 986 (6th Cir. 2006); *GHASP* v. *EPA,* No. 06–61030 (5th Cir. Aug. 13, 2008); see also, e.g., 70 FR 53 (Jan. 3, 2005), 70 FR 28429 (May 18, 2005) (proposed and final rules, upheld in *Kentucky Resources,* which discuss EPA's interpretation of section 110(l).

EPA has determined that Utah's SIP revision will not ''interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of [the CAA]'' in violation of Section 110(l) of the CAA because it will result in neutral or beneficial effects on air quality. EPA's conclusion rests on two major analyses: (1) the national-scale analysis that EPA conducted in support of the 2002 NSR Reform Rules, and (2) the state-specific analysis that Utah DEQ conducted in support of its recent regulatory revisions.

First, EPA's national analysis in support of the 2002 NSR Reform Rules indicates that the non-vacated provisions of the NSR Reform Rules will have a neutral or beneficial impact. The three significant changes in the 2002 NSR Reform Rules that were upheld by the court were (1) Plantwide applicability limits (PALs), (2) the 2-in-10 baseline, and (3) the actual-to-projected actual emission test. EPA's Supplemental Environmental Analysis of the Impact of the 2002 Final NSR Improvement Rules (November 21, 2002) (Supplemental Analysis) discussed each of these three changes individually, and addresses some of the issues raised by NRDC.

With regard to PALs, the Supplemental Analysis explains, ''EPA expects that the adoption of PAL provisions will result in a net environmental benefit. Our experience to date is that the emissions caps found in PAL-type permits result in real emissions reductions, as well as other benefits.'' Supplemental Analysis at 6. EPA further explained that:

> Although it is impossible to predict how many and which sources will take PALs, and what actual reductions those sources will achieve for what pollutants, we believe that, on a nationwide basis, PALs are certain to lead to tens of thousands of tons of reductions of VOC from source categories where frequent operational changes are made, where these changes are time sensitive, and where there are opportunities for economical air pollution control measures. These reductions occur because of the incentives that the PAL creates to control existing and new units in order to provide room under the cap to make necessary operational changes over the life of the PAL.

Supplemental Analysis at 7. The Supplemental Analysis, and particularly Appendix B, provides additional details regarding EPA's analysis of PALs and

anticipated associated emissions decreases.

With regard to the 2-in-10 baseline, EPA concluded that ''the environmental impact from the change in baseline EPA is now finalizing will not result in any significant change in benefits derived from the NSR program.'' Supplemental Analysis at 13. This is mainly because ''the number of sources receiving different baselines likely represents a very small fraction of the overall NSR permit universe, excludes new sources and coal fired power plants, and because the baseline may shift in either direction, we conclude that any overall consequences would be negligible.'' Supplemental Analysis at 14. Additional information regarding the 2-in-10 baseline changes is available in the Supplemental Analysis, Appendix F.

With regard to the actual-to-projected actual test, EPA concluded, ''We believe that the environmental impacts of the switch to the actual-to-projected actual test are likely to be environmentally beneficial. However, as with the change to the baseline, we believe the vast majority of sources, including new sources, new units, electric utility steam generating units, and units that actually increase emissions as a result of a change, will be unaffected by this change. Thus, the overall impacts of the NSR changes are likely to be environmentally beneficial, but only to a small extent.'' Supplemental Analysis at 14 (see also Supplemental Analysis Appendix G). EPA has no reason to believe that the environmental impacts will be substantially different from those discussed in the Supplemental Analysis for the 2002 NSR Reform Rules.[1]

As NRDC acknowledges, the Utah PSD rules track the Federal 2002 NSR Reform Rules. Overall, as summarized above, EPA expects that changes in air quality as a result of implementing Utah's PSD rules will be consistent with EPA's position on the Federal 2002 NSR Reform Rules—that there will be somewhere between neutral and providing modest contribution to reasonable further progress when the 2002 NSR Reform Rules are compared to the pre-reform provisions. EPA's analysis for the environmental impacts of these three components of the 2002 NSR Reform Rules is informative of how Utah's adoption of NSR Reform (based on the Federal rules) is expected to affect emissions and air quality. EPA has no reason to believe that the environmental impacts in Utah will be substantially different from the anticipated nationwide effects discussed in the Supplemental Analysis for the 2002 NSR Reform Rules.

Second, Utah's own analysis of the air quality impacts of its rules supports EPA's conclusion that approval of Utah's SIP revision will not ''interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of [the CAA]'' in violation of Section 110(l) of the CAA. As discussed above, NRDC cites seven general sections of Utah's rules as provisions the approval of which would violate Section 110(l). Without further specificity, however, it is not clear why or how NRDC believes approval of these provisions would violate Section 110(l). Moreover, NRDC has provided no information or data that indicates that EPA's analysis and conclusions regarding the impact of the 2002 NSR Reform Rules, in the Supplemental Analysis, are not applicable to Utah's rules, which mirror the Federal rules.

Utah has, however, provided such an analysis. Utah DEQ evaluated the air quality impact of the NSR Reform provisions when the State adopted the rule in 2006. In response to comments that the NSR Reform rule will allow many more modifications at existing major sources than the current NSR rules, the State noted that major source permitting requirements in attainment areas (the PSD permitting program) are only a portion of Utah's overall permitting requirements and the effect of the NSR Reform provisions must be viewed in the context of the entire program, including, in particular, Utah's overall statewide permitting program and the NSR requirements it imposes on *minor* sources. These requirements require all new sources and modifications, whether major or minor, to apply Best Available Control Technology (BACT), with limited exceptions (discussed below). Therefore, even when a source does not trigger PSD, the source must still apply BACT. The net effect is that emissions will not change if a project is reviewed under the minor source requirements rather than the PSD regulations. Similarly, Utah's statewide permitting program requires that sources that exceed certain emissions thresholds conduct modeling to ensure that their emissions will not result in an exceedance of the NAAQS. The thresholds that Utah applies for this requirement are the same significance thresholds as the PSD regulations require. Thus, Utah applies the same essential control technology and modeling requirements to minor sources as it does to major sources. Consequently, the fact that a source or modification might have been subject to the previously-approved PSD regulation, but is not subject to the revised PSD regulation, is not likely to result in increased emissions or interfere with NAAQS attainment.

In support of this conclusion, the State analyzed 14 different scenarios to determine how a modification would be affected by the change in applicability provisions. The scenarios focused on the types of changes that would no longer be subject to the PSD rule, and examined whether these modifications would still require Best Available Control Technology (BACT) and/or modeling to ensure that the NAAQS were not exceeded. In 12 of the 14 scenarios, under Utah's SIP-approved minor NSR program, BACT would be required for the modification even if the modification no longer met the applicability provisions of the PSD rule.[2] Therefore, the state concluded that emissions will not increase under the NSR Reform rule. The two exceptions, where BACT would not be required, occurred for modifications where emissions from the source are *decreasing.* Under these two scenarios, an emissions-decreasing modification that would have required review under the previously-approved PSD program could, under the revised rules, be constructed without the requirement to apply BACT. This is the type of scenario where the PSD rule created a disincentive for sources to reduce emissions. Adoption of the NSR Reform rule will remove this disincentive by allowing sources to install pollution controls or increase the efficiency of older emission units without requiring BACT, thereby resulting in reduced emissions overall.

Utah further evaluated a number of different scenarios to determine whether modifications that would no longer be subject to PSD would still be reviewed under Utah's minor source program or whether they might avoid that review as

[1] In reviewing EPA's approval of a Wisconsin SIP amendment that adopted of the 2002 NSR Reform rules, a Federal appeals court recently held that EPA could rely on the Supplemental Analysis in support of its approval. See *NRDC* v. *Jackson,* Nos. 09–1405 & 10–2123 (7th Cir., Jun. 16, 2011), 2011 US App LEXIS 12116.

[2] The federally approved Utah SIP incorporates by reference ''Utah Air Conservation Regulations, R307–1–3.1.8 * * * effective August 16, 1993.'' 40 CFR 52.2320(c)(28)(i)(B). That regulation provides that ''[t]he [Utah DEQ] shall issue an approval order if [it] determines * * * that * * * [t]he degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology except as otherwise provided in these regulations.'' Utah has since renumbered this regulation to Utah Administrative Code R307–401–8 but has not changed the substance of the quoted requirement.

well. Utah's minor source permitting program has a number of exemptions that are located in R307–401–9 through 16. Most of the exemptions would only apply to sources that would be minor under Utah's previously-approved PSD regulations as well as under the revised rules. The two that could possibly apply to sources that would qualify as PSD major sources under Utah's previously-approved PSD regulations are R307–401–11, Replacement-in-kind Equipment and R307–401–12, Reduction in Air Contaminants.

The replacement-in-kind rule is restrictive, and has been modified to contain some of the more specific language regarding eligibility that is found in the PSD rule. Because sources have an incentive to upgrade to newer, more efficient units and because older technologies are often no longer available, this rule is not used by sources to avoid updated technology.

Similarly, the reduction in air contaminants exemption under R307–401–12 applies by definition to sources that are *decreasing* emissions. As described above, the State believes that removing the disincentive through NSR Reform is likely to decrease emissions in Utah overall.

Accordingly, EPA has concluded that adoption of this SIP revision will maintain or improve air quality and meets the requirements of section 110(l).

2. Section 193

a. Summary of Comments Regarding Section 193:

Section 193 of the CAA states (in relevant part) that ''[n]o control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.'' NRDC states that ''[t]he same Utah provisions'' discussed earlier in its comment violate Section 193. NRDC argues that NSR is a control requirement and thus the requirements of Section 193 apply to the NSR rules at issue in the Utah SIP revision. NRDC further alleges that neither Utah nor EPA has determined that Utah's revisions will ensure equivalent or greater emissions reductions; to the contrary, NRDC alleges that ''the modifications ensure that emissions will not be reduced as much as under the preexisting rules.''

b. EPA Response to Section 193-Related Comments:

Utah's NSR Reform rule is focused on the major source permitting requirements in attainment areas (PSD permitting program). It does not alter permitting or control requirements for pollutants for which the area is designated nonattainment, and therefore is not subject to Section 193. NSR reform in nonattainment areas will be dealt with in a future rulemaking. Furthermore, as discussed above, the overall effect of Utah's revisions is expected to be neutral or beneficial. Thus, even if Section 193 were applicable, Utah's revision would satisfy Section 193 for the same reason that it satisfies Section 110(l).

II. Final Action

A. Rules To Approve Into the Utah SIP

EPA is taking final action to approve a revision to Utah's SIP that would, for the most part, incorporate by reference the Federal PSD requirements, found in 40 CFR 52.21, into the State's PSD program and replace EPA's prior approvals. The March 7, 2008 submitted revision to R307–405 incorporates by reference the provisions of 40 CFR 52.21 as they existed on July 1, 2007, with the exceptions noted below.

Utah did not incorporate by reference those sections of the Federal rules that do not apply to State activities or are reserved for the Administrator of the EPA. These sections are 40 CFR 52.21(a)(1) (Plan disapproval), 52.21(q) (Public participation), 52.21(s) (Environmental impact statements), 52.21(t) (Disputed permit or redesignations), and 52.21(u) (Delegation of authority). Utah did not incorporate by reference the vacated Federal requirements for ''Equipment Replacement,'' ''Clean Unit,'' and ''Pollution Control Project.''

Utah's March 7, 2008 submittal of the incorporation by reference revisions to R307–405 describes the circumstances in which the term ''Administrator'' continues to mean the EPA Administrator, and when it means instead the Executive Secretary of the Utah Air Quality Board. R307–405–3(3)(d)(ii)) identifies the following provisions in R307–405 where the term ''Administrator'' shall be changed to ''EPA Administrator:'' 40 CFR 52.21(b)(17), 52.21(b)(37)(i), 52.21(b)(43), 52.21(b)(48)(ii)(c), 52.21(b)(50)(i), 52.21(l)(2), 52.21(p)(2), and 51.166(q)(2)(iv).

As noted above, Utah did not incorporate by reference 40 CFR 52.21(q) (Public participation). Utah has instead incorporated by reference 40 CFR 51.166(q) (Public participation) at Utah rule R307–405–18. The provisions in 40 CFR 51.166 identify what a SIP must contain for EPA to approve a PSD permit program, and generally mirror the federal PSD regulations at 40 CFR 52.21. In addition, Utah added in Utah rule R307–405–18(2) an additional provision that modifies the PSD permit public participation requirements in 40 CFR 51.166(q) to replace ''within a specified time period'' in 40 CFR 51.166(q)(1) with ''within 30 days of receipt of the PSD permit application.''

The following provisions in R307–405 do not incorporate by reference 40 CFR 52.21, but instead either add language that is currently contained in the Utah SIP or add language specific to Utah's PSD program: R307–405–4 (''Area Designations''), R307–405–5 (''Area Redesignation''), and R307–405–8 (''Exclusions From Increment Consumption''). We have determined that these provisions are consistent with the requirements for SIP approved states contained in 40 CFR 51.166(e), (f), and (g).

EPA is also taking final action on approval of the September 15, 2006 submitted revision R307–110–9 (''Section VIII, Prevention of Significant Deterioration of the Utah Air Quality Rules'') to indicate that the most currently amended version is March 8, 2006. Section VIII summarizes, in a narrative fashion, the current federal PSD requirements, in addition to the Utah specific permitting requirements for new and modified sources and area designations. We are approving the March 8, 2006 version of Section VIII into the SIP to replace the federally-approved December 18, 1992 version currently in the Utah SIP.

As described above, the requirements included in Utah's PSD program, as specified in R307–405 are substantively the same as the Federal PSD provisions due to Utah's incorporation of the federal rules by reference. The revisions Utah made, in consideration of the requirements provided in 40 CFR 52.21, were reviewed by EPA and found to be as stringent as the requirements for PSD programs in 40 CFR 51.166, except as noted above regarding the provision in R307–405–3(3)(a)(i). Therefore, EPA has determined that, except for R307–405–3(3)(a)(i), the rule revisions to R307–405 and R307–110–9 are consistent with the program requirements for the preparation, adoption, and submittal of implementation plans for the Prevention of Significant Deterioration of Air Quality, as set forth in 40 CFR 51.166, and are approvable.

B. Rules To Disapprove and Therefore Not Incorporate Into the Utah SIP

Utah has adopted a specific definition of ''Major Source Baseline Date,'' found at R307–405–3(3)(a)(i), in its revised PSD rule. This definition deviates from the definition found in 40 CFR 52.21(b)(14) and the corresponding requirement for state PSD programs at 51.166(b)(14). Utah's definition specifies that the major source baseline date for particulate matter 10 microns in diameter or less (PM_{10}) is the ''date that EPA approves the PM_{10} maintenance plan that was adopted by the Board on July 6, 2005'' for Davis, Salt Lake, Utah, and Weber Counties. The requirement for State programs at 40 CFR 51.166(b)(14) specifies January 6, 1975 as the major source baseline date for particulate matter, and the current EPA-approved SIP for Utah also specifies January 6, 1975 as the major source baseline date for PM–10 for the entire State (refer to Utah's SIP-approved rule R307–101–2 ''Definitions''). EPA is not aware of any authority for it to approve into a SIP a different major source baseline date other than January 6, 1975. Further, we note there is no provision in the CAA for using a different date if an area was in a legally designated non-attainment status on January 6, 1975. EPA is taking final action to disapprove Utah's definition of ''Major Source Baseline Date,'' and therefore, the current federally-approved definition found in R307–101–2 would continue to apply as a federally enforceable provision in lieu of the State-adopted version.

C. Scope of Action

We are taking final action to partially approve revisions to R307–405 (''Permits: Major Sources in Attainment or Unclassified Areas (PSD)'') and to approve revisions to R307–110–9 (''Section VIII, Prevention of Significant Deterioration of the Utah Air Quality Rules''). EPA is taking final action to disapprove R307–405–3.(3)(a)(i) because it defines ''Major Source Baseline Date'' in a manner inconsistent with the federal definition found at 40 CFR 52.21(b)(14). In all other respects we are approving the State's March 7, 2008 submitted revisions to R307–405, and the State's September 15, 2006 submitted revisions of R307–110–9.

Utah has not demonstrated authority to implement and enforce these rules within ''Indian country'' as defined in 18 U.S.C. 1151.5. Therefore, this SIP approval does not extend to ''Indian country'' in Utah.[3] See CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Utah's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Utah because the State had not shown it had authority to regulate such sources. See 40 CFR 52.683(b). It is also consistent with EPA's approval of Utah's title V air operating permits program. See 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian country).

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 proposed 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, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 13, 2011 . Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time

[3] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Utah, Indian country includes, but is not limited to, the Northwestern Band of the Shoshoni Nation, the Paiute Indian Tribe of Utah, the Skull Valley Band of Goshute Indians, and the Ute Indian Tribe on the Uintah and Ouray Reservation.

within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 29, 2011.

James B. Martin,

Regional Administrator, Region 8.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(69) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(69) On September 15, 2006 and March 7, 2008 the State of Utah submitted revisions to its State Implementation Plan (SIP) that contained revised rules pertaining to the State's Prevention of Significant Deterioration (PSD) preconstruction permit program.

(i) Incorporation by reference.

(A) The Utah Administrative Code (UAC), R307–110–9, *Section VIII, Prevention of Significant Deterioration,* is amended effective June 16, 2006.

(B) The Utah Administrative Code (UAC), R307–405, *Permits: Major Sources in Attainment or Unclassified Areas (PSD),* (except R307–405–3(2)(a)(i), ''Major Source Baseline Date'') is amended effective September 7, 2007.

[FR Doc. 2011–17783 Filed 7–14–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0537; FRL–9431–9]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from consumer paint thinner & multi-purpose solvents and metalworking fluids & direct-contact lubricants. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on September 13, 2011 without further notice, unless EPA receives adverse comments by August 15, 2011.

If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0537, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions.

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

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

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

Docket: Generally, documents in the docket for this action are 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, large maps), 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.

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I. The State's Submittal

A. What rules did the State submit?

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

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
SCAQMD	1143	Consumer Paint Thinner & Multi-Purpose Solvents	12/3/10	4/5/11.

TABLE 1—SUBMITTED RULES—Continued

Local agency	Rule No.	Rule title	Amended	Submitted
SCAQMD	1144	Metal Working Fluids & Direct-Contact Lubricants	7/9/10	4/5/11.

On May 6, 2011, EPA determined that both submittals met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There are no previous versions of SCAQMD Rule 1143 in the SIP. We approved an earlier version of SCAQMD Rule 1144 into the SIP on 7/14/2010 (75 FR 40726).

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. Both SCAQMD Rule 1143 and Rule 1144 limit emissions of VOC from the application of thinners, solvents, metal-working fluids and direct-contact lubricants. 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 sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193). SCAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so SCAQMD Rule 1143 and Rule 1144 must fulfill RACT.

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

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

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

3. CARB's Consumer Products Regulation, Title 17, California Code of Regulations (CCR), Division 3, Chapter 1, Subchapter 8.5, Article 2, Sections 94507–94517.

4. EPA's model VOC rule guidance titled, ''Model Volatile OrganicCompound Rules for Reasonably Available Control Technology'' (June 1992).

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 we recommend for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 15, 2011, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 13, 2011. This will incorporate these rules into the federally enforceable SIP.

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

III. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that

it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 22, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(388) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(388) New and amended regulations for the following APCD were submitted on April 5, 2011, by the Governor's Designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 1143, ''Consumer Paint Thinners & Multi-Purpose Solvents,'' Amended December 3, 2010.

(*2*) Rule 1144, ''Metalworking Fluids and Direct-Contact Lubricants,'' Amended on July 9, 2010.

* * * * *

[FR Doc. 2011–17759 Filed 7–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–R04–SFUND–2011–0574; FRL–9438–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Hipps Road Landfill Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is publishing a direct final Notice of Deletion of the Hipps Road Landfill Superfund Site (Site), located in Jacksonville, Florida, 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 Florida, through the Florida Department of Environmental Protection, 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 September 13, 2011 unless EPA receives adverse comments by August 15, 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–R04–SFUND–2011–0574, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail: miller.scott@epa.gov.*
- *Fax:* 404–562–8896.
- *Mail:* Scott Miller, Remedial Project Manager, Superfund Remedial Branch, Section C, Superfund Division, U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303.
- *Hand delivery:* Same address as listed above. 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–R04–SFUND–2011–0574. 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 statue. 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 Record Center, 61 Forsyth Street, SW, Atlanta, GA 30303, Hours: 8 a.m. to 4 p.m., Monday through Friday, Jacksonville Public Library, 6886 103rd Street, Jacksonville, FL 32210, Monday–Thursday: 10 a.m.–9 p.m., Friday and Saturday: 10 a.m.–6 p.m. Sunday: 1 p.m.–6 p.m.

FOR FURTHER INFORMATION CONTACT:

Scott Miller, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303, (404) 562–9120, email: *miller.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 4 is publishing this direct final Notice of Deletion of the Hipps Road Landfill (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 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 *September 13, 2011* unless EPA receives adverse comments by *August 15, 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 Hipps Road Landfill 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 Florida prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the Federal Register.

(2) EPA has provided the Florida Department of Environmental Protection (FDEP) 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 the FDEP, 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, Florida Times-Union. 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 twelve acre Hipps Road Landfill Site (EPA CERCLIS Identification Number FLD980709802) is located on the southeastern corner at the intersection of Hipps Road and Exline Road in Jacksonville Heights, Duval County, Florida. Landfill operations were conducted on approximately six acres of the Site. The Site is surrounded by a residential neighborhood. The Site's landfill area was initially a

cypress swamp. In 1968, property owner G. O. Williams contracted with Waste Control of Florida (WCF) to fill the low-lying areas of the property. Landfill operations ceased in 1970 and were covered by soil. In the early 1980s, residents complained about unusual tastes and odors in private water wells, which led to investigations that identified groundwater contamination. The City of Jacksonville began to provide residents with bottled water for use as a potable water source. The City of Jacksonville completed the extension of a city water line to the affected area in October 1983 and by September 1985, all area residents were connected to the public water system. WCF acquired the residential properties in 1987. Waste Management Corporation (WM) inherited the Site property through its acquisition of WCF. Surface water is not used as a drinking water supply in the area. Surface waters nearby are used for recreational purposes such as swimming, boating, and fishing. There are no ecologically sensitive areas near the Site, which is situated above the 500-year flood plain. WM, the current landowners, have expressed interest in using the Site as a wildlife habitat area. The Site was proposed to the NPL in September 1983 (48 FR 40674) and was finalized to the NPL on September 21, 1984 (49 FR 37070).

Remedial Investigation and Feasibility Study (RI/FS)

In May 1986, EPA presented the results of the RI/FS, which included geophysical investigations, soil sampling, and groundwater sampling to characterize the Site. The results indicated that Site groundwater was the media of concern, and the migration of contaminants would occur in the lower sand aquifer located to the northeast of the landfill.

The contaminants of concern (COCs) identified at the Site in the Site's 1990 ROD Amendment were bis (2-ethylhexyl) phthalate, chlorobenzene, chromium, 1,4-dichlorobenzene, trans-1,2-dichloroethylene, ethyl benzene, lead, naphthalene, and vinyl chloride. The risk assessment conducted during the FS concluded that none of the compounds detected in Site soil were present at concentrations of toxicological concern. The RI/FS was completed in September 1986.

Seven groundwater and five soil remedial actions were retained for detailed evaluation in the FS and were evaluated based on the National Contingency Plan decision criteria found at 40 CFR 300.430(e)(9) and include nine separate criteria used to evaluate each combination of remedial alternatives.

Selected Remedy

The ROD was released on September 3, 1986. The remedy for the Site included the following components:

- Proper landfill closure in a manner consistent with all applicable federal, state and local requirements.
- Recovery of contaminated groundwater with treatment at the publicly owned treatment works (POTW).
- Long-term monitoring of groundwater
- Operation and maintenance includes upkeep of the landfill cap, groundwater monitoring, and maintenance of the groundwater recovery system. O&M will continue for at least 20 years after the final groundwater recovery operation.
- Institutional controls may include, but are not limited to, fencing the site, continuance of the local well drilling prohibition, land use restrictions, grouting existing private wells, and public or PRP acquisition of private lands.

In September 1990, EPA amended the ROD to provide for on-Site groundwater treatment and disposal as a more cost effective treatment alternative to disposal of groundwater to the publicly-owned treatment works (POTW). The 1990 ROD Amendment changed the remedy to the recovery of groundwater from five recovery wells; treatment of contaminated groundwater by air stripping; and the use of an on-Site holding pond for disposal of treated groundwater.

In August 1994, EPA issued an ESD to alter the method by which the abandonment of private wells impacted by the Site groundwater was achieved. In June 1996, EPA issued a second ESD to address operating difficulties at the groundwater treatment system during excessive rainfall and/or effluent discharges. During this situation, the high water level switch in the holding pond would trigger a system shutdown. In an effort to keep the treatment system operational, the ESD allowed for the periodic discharge of treated groundwater to the local POTW during high water levels in the holding pond.

In July 2004, EPA issued a third ESD, which changed the existing pump-and-treat recovery system to a monitored natural attenuation (MNA) plan to complete remediation of remaining groundwater contaminants.

Response Actions

On May 22, 1989, the landfill closure design was completed. The Remedial Design used a standard municipal cap design consisting of:

a. General earthfill cover to provide a crown over the landfill area with a minimum grade of 2.5 percent towards the perimeter of the landfill

b. One foot of low-permeability clay having a permeability of 1×10^{-6} cm/s or less

c. Two feet of vegetative soil cover and vegetative cover

The Remedial Action construction for both the landfill closure and groundwater treatment system began in October 1989 and was completed on September 2, 1993, as documented in the September 9, 1994, Preliminary Closeout Report. Construction of the landfill cap was completed in April 1990 and final inspection of the landfill cover was April 26, 1990. The complete groundwater treatment system was constructed from May through August 1993. The groundwater treatment system included the installation of recovery wells, air-stripping system, and air blower system. Long-term groundwater monitoring began on March 15, 1994.

As recommended in the 2001 MNA Pilot Study Report, the Remedial Goal Verification Plan (RGVP) monitoring program was replaced with the MNA long-term monitoring program beginning in September 2004. The MNA long-term monitoring program called for groundwater monitoring well sampling semi-annually.

The wells included in the MNA long-term monitoring program fulfilled the following four purposes: (1) Confirm ongoing natural attenuation mechanisms; (2) ensure that benzene and vinyl chloride concentrations continue to be below cleanup goals; (3) monitor benzene and vinyl chloride in groundwater in areas in proximity to (or upgradient of) potential receptors; and (4) monitor the efficiency of the landfill cap. The MNA long-term monitoring program included the following tasks:

- Semi-annual hydraulic (water level) monitoring of piezometers, monitoring wells, and recovery wells, as specified in the RGVP.
- Semi-annual groundwater sample collection at upgradient wells TMW–1I and TMW–5I; side-gradient wells TMW–10I; and plume wells TMW–9I, TMW–13I, and RW–2 for analyses of volatile organic compounds (VOCs) via EPA Method 8260B. EPA approved discontinuing sampling and analysis of MNA long-term monitoring program wells TMW–7I, RW–3, TMW–6I, and RW–1 on March 3, 2006. Concentrations of benzene and vinyl chloride detected in these monitoring wells were below ROD cleanup criteria for four or more

consecutive quarters and satisfied the cleanup criteria for the RGVP and MNA monitoring program.

- Semi-annual field monitoring of the following parameters where groundwater samples were collected: dissolved oxygen, oxidation reduction potential, conductivity, pH, and temperature.
- Annual groundwater sample collection for the analyses of biogeochemical parameters and dissolved gases, and field analysis of alkalinity, sulfide, and ferrous iron.

Groundwater monitoring occurred semi-annually and associated reports were submitted to EPA semi-annually. Off-Site wells were sampled until cleanup goals were achieved for four consecutive sampling events in February 2010.

Since the Site's 2005 Five Year Review, the landfill cover, infiltration pond, and security fencing were inspected semi-annually; each Site inspection found that they were properly maintained. In addition, each semi-annual report has shown that:

- Site security, including a locked gate and perimeter fencing with appropriate notice signs, was in place.
- Stormwater management features were functioning as designed.
- The landfill cover was inspected.
- No adverse conditions were observed.

The Site has two institutional controls in place that provide protection to potential receptors. The Site lies within a Florida Groundwater Delineation Area found at Florida Administrative Code (FAC) 62–524, which restricts placement of new wells on the property and surrounding areas. This regulation was codified on March 25, 1990. The Site also lies within the jurisdiction of the St. John's River Water Management District (SJRWMD), which implements water supply well permitting controls and restricts groundwater withdrawals. A restrictive covenant recorded in the Duval County real estate records for the five parcels that constitute the Site restricts land use so that there would be no land disturbance which would effect the integrity of the final landfill cover or any component of the containment system without approval from the EPA Region 4 Regional Administrator. This restrictive convenant was recorded on January 24, 1988.

Cleanup Goals

Groundwater sampling data from September 2005 through September 2009 has been reviewed to determine cleanup goal attainment. In addition, groundwater sampling results of three off-Site wells, TMW–91, TMW–131 and RW–2, were reviewed from November 2009 and February 2010. No COCs have been detected in any off-Site well since 2008. No COCs have been detected above cleanup goals in on-Site wells since the 2005 Five Year Review.

TABLE 1—CONTAMINANTS OF CONCERN AND THEIR CLEAN UP GOALS

Contaminants of concern	Clean up goals (μg/L)
Benzene	1
Chlorobenzene	100
Chromium	100
1,4-dichlorobenzene	75
Trans-1,2-dichloroethylene	100
Ethyl benzene	700
Lead	15
Naphthalene	140
Vinyl chloride	1

Through the Fifty-First Monitoring and Maintenance Report monitoring period which has groundwater monitoring data obtained from April 1, 2009 to September 20, 2009, only three MNA monitoring wells (TMW–91, TMW–131, and RW–2) had not achieved the ROD cleanup criteria of four consecutive sampling events with results below cleanup goals. Benzene was detected above the cleanup goal of 1 μg/L in the three wells at concentrations ranging from 1.0 to 4.5 μg/L. Vinyl chloride was detected above the cleanup goal of 1 μg/L in RW–2 once in October 2005 and in TMW–131 in March and September 2006 and March 2007. Additional sampling of TMW–91, TMW–131 and RW–2 was performed in November 2009 and February 2010. The March 2010 Final Monitoring and Maintenance Report and Site Delisting Request included the supplemental TMW–91, TMW–131, and RW–2 sampling results, which found no COCs above cleanup goals. No COCs were detected above cleanup goals in the February, September, and November 2009 and February 2010 sampling. As of February 2010, all monitoring wells have met the ROD criteria of meeting cleanup goals for four consecutive monitoring events.

Operation and Maintenance

Waste Management designed and implemented an Operation and Maintenance Plan to ensure the long-term effectiveness of the ROD remedial elements. This Operations and Maintenance Plan was submitted on May 17, 1994. This Plan addressed maintaining the integrity and effectiveness of the final cover, including repairing the landfill cover; maintenance and sampling of the groundwater monitoring network; and protecting and maintaining surveyed benchmarks associated with institutional controls.

Five-Year Review

Since hazardous substances are present onsite above levels allowing for unlimited use and unrestricted exposure, statutory Five Year Reviews will be conducted by EPA every five years, pursuant to CERCLA Section 121 (c) and as provided in OSWER Directive 9355.7–03B–P, *Comprehensive Five-Year Review Guidance* (EPA, 2001). The purpose of these reviews is to ensure that the Site remedy remains protective of human health and the environment. The first Five Year Review at the Site was conducted in February 1996, the second in July 2000, the third in September 2005, and the fourth in July 2010.

The Fourth Five-Year Review concluded that remedial actions at the Hipps Road Landfill Superfund Site are protective of human health and the environment in the short term, and exposure pathways that could result in unacceptable risks are being controlled. In order for the site to remain protective in the long-term, the Site needed to be assessed to determine if ICs are necessary to prevent inappropriate land use. Further analysis of existing groundwater use prohibitions related to the delineated areas and examination of the existing restrictive covenant indicate that all institutional controls needed at the Site have been implemented. EPA will complete the next Five Year Review by July 2015.

Community Involvement

A public meeting was held on May 7, 1986, to present EPA's proposed plan for remedial action to the local community. Since that time community involvement activities, including community interviews, have occurred during each Five-Year review period (1996, 2000, 2005, 2010). Copies of site documents are in the designated Site repository at the Jacksonville Public Library, Webb-Wesconnett Regional Branch located at 6887 103rd St., Jacksonville, Florida.

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, Florida Times-Union. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

Determination That the Site Meets the Criteria for Deletion in the NCP

The NCP specifies that EPA may delete a site from the NPL if ''all appropriate responsible parties or other persons have implemented all appropriate response actions required'' or ''all appropriate fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate''. EPA, with the concurrence of the State of Florida through the FDEP by a letter dated April 22, 2011, has determined that the Site responsible party Waste Management has implemented all appropriate response actions required and no further response action is required. Therefore, EPA is proposing the deletion of the site from the NPL. All of the completion requirements for the site have been met as described in the Hipps Road Landfill Final Close Out Report (FCOR) dated April 21, 2011.

V. Deletion Action

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

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 13, 2011 unless EPA receives adverse comments by August 15, 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: June 9, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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.

Appendix B to Part 300 [Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing ''FL'' ''Hipps Road Landfill'', ''Duval County''.

[FR Doc. 2011–17754 Filed 7–14–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 100622276–0569–02]

RIN 0648–XA541

Atlantic Highly Migratory Species; Inseason Action To Close the Commercial Gulf of Mexico Non-Sandbar Large Coastal Shark Fishery

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

ACTION: Fishery closure.

SUMMARY: NMFS is closing the commercial fishery for non-sandbar large coastal sharks (LCS) in the Gulf of Mexico region. This action is necessary because the quota for the 2011 fishing season is projected to have reached at least 80 percent of the available quota.

DATES: The commercial non-sandbar LCS fishery is closed effective 11:30 p.m. local time July 17, 2011, until and if NMFS announces, via a notice in the **Federal Register** that additional quota is available and the season is reopened.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, or Guy DuBeck, 301–427–8503; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under § 635.5(b)(1), shark dealers are required to report to NMFS all sharks landed every two weeks. Dealer reports for fish received between the 1st and 15th of any month must be received by NMFS by the 25th of that month. Dealer reports for fish received between the 16th and the end of any month must be received by NMFS by the 10th of the following month. Under § 635.28(b)(2), when NMFS projects that fishing season landings for a specific shark quota have reached or are projected to reach 80 percent of the available quota, NMFS will file for publication with the Office of the **Federal Register** a notification of closure for that shark species group which will be effective no fewer than 5 days after the date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for that specific quota is closed, even across fishing years.

On December 8, 2010 (75 FR 76302), NMFS announced that the non-sandbar LCS fishery for the Gulf of Mexico region for the 2011 fishing year would open on March 1 with a quota of 351.9 metric tons (mt) dressed weight (dw) (775,740 lb dw). Dealer reports through June 29, 2011, indicate that 278.3 mt dw or 79 percent of the available quota for non-sandbar LCS has been taken. Dealer reports received to date indicate that 52 percent of the quota was taken in March; 10 percent of the quota was landed in April; 10 percent of the quota was landed in May; and 7 percent from June 1 through June 29. Based on the rate of fishing effort indicated by these preliminary dealer reports, NMFS estimates that an additional 8 to 21 percent of the quota could be taken from June 29 through July 15, 2011, thus reaching or exceeding the 80-percent limit specified for a closure notice in the regulations. Accordingly, NMFS is closing the commercial non-sandbar LCS fishery in the Gulf of Mexico region as of 11:30 p.m. local time July 17, 2011. All other shark fisheries remain open.

At § 635.27(b)(1)(ii), the boundary between the Gulf of Mexico region and the Atlantic region is defined as a line beginning on the East Coast of Florida at the mainland at 25°20.4′ N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region.

During the closure, retention of non-sandbar LCS sharks in the Gulf of Mexico region is prohibited for persons fishing aboard vessels issued a commercial shark limited access permit under 50 CFR 635.4. Unless the vessel is properly permitted to operate as a

charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and ''no sale'' provisions apply (50 CFR 635.22(a) and (c)), or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard. A shark dealer issued a permit pursuant to § 635.4 may not purchase or receive non-sandbar LCS in the Gulf of Mexico region from a vessel issued an Atlantic Shark Limited Access Permit (LAP), except that a permitted shark dealer or processor may possess non-sandbar LCS that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage consistent with § 635.28(b)(4). However, a permitted shark dealer or processor may possess non-sandbar LCS that were harvested by a vessel issued a valid shark research fishery permit per § 635.32 with a NMFS-approved observer onboard during the trip the sharks were taken on as long as the non-sandbar shark research fishery remains open. Under this closure, a shark dealer issued a permit pursuant to § 635.4 may, in accordance with state regulations, purchase or receive a non-sandbar LCS in the Gulf of Mexico region if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and that has not been issued an Atlantic Shark LAP, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary to the public interest because the fishery is currently underway, and any delay in this action would cause overharvest of the quota and be inconsistent with management requirements and objectives. Similarly, affording prior notice and opportunity for public comment on this action is contrary to the public interest because if the quota is exceeded, the affected public is likely to experience reductions in the available quota and a lack of fishing opportunities in future seasons. Thus, for these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553 (d)(3). This action is required under § 635.28(b)(2) and is exempt from review under Executive Order 12866.

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

Dated: July 12, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–17898 Filed 7–12–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 136
Friday, July 15, 2011

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0515; Airspace Docket No. 11–ANM–11]

Proposed Amendment of Class E Airspace; Miles City, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Frank Wiley Field, Miles City, MT, to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Frank Wiley Field. Additionally, the geographic coordinates for Frank Wiley Field would be adjusted. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before August 29, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–0515; Airspace Docket No. 11–ANM–11, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2011–0515 and Airspace Docket No. 11–ANM–11) and be submitted in triplicate to the Docket Management System (see ''**ADDRESSES**'' section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–0515 and Airspace Docket No. 11–ANM–11''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E surface airspace and Class E airspace extending upward from 700 feet above the surface at Frank Wiley Field, Miles City, MT. Controlled airspace is necessary to accommodate aircraft using new RNAV (GPS) standard instrument approach procedures at the Airport, and would enhance the safety and management of aircraft operations. This action would also adjust the geographic coordinates for Frank Wiley Field to coincide with the FAA's aeronautical database.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, part A, subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it creates additional controlled airspace at Frank Wiley Field, Miles City, MT.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace Designated as Surface Areas.

* * * * *

ANM MT E2 Miles City, MT [Modified]

Miles City, Frank Wiley Field, MT
(Lat. 46°25′41″ N., long. 105°53′11″ W.)

Within a 4.9-mile radius of Frank Wiley Field, and within 3 miles each side of the 226° bearing of Frank Wiley Field extending from the 4.9-mile radius to 10.8 miles southwest of the airport, and within 3 miles each side of the 253° bearing of Frank Wiley Field extending from the 4.9-mile radius to 9.4 miles west of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ANM MT E5 Miles City, MT [Modified]

Miles City, Frank Wiley Field, MT
(Lat. 46°25′41″ N., long. 105°53′11″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Frank Wiley Field, and within 3.1 miles each side of the 047° bearing from Frank Wiley Field extending from the 7.4-mile radius to 15.5 miles northeast of the airport, and within 3.5 miles each side of the 226° bearing from Frank Wiley Field, extending from the 7.4-mile radius to 15 miles southwest of the airport, and within 4.5 miles each side of the 253° bearing from Frank Wiley Field, extending from the 7.4-mile radius to 12 miles west of the airport; that airspace extending upward from 1,200 feet above the surface within a 34.5-mile radius of Frank Wiley Field.

Issued in Seattle, Washington, on July 7, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–17850 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 234 and 241

[Docket No. RITA 2011–0001]

RIN 2139–AA13

Reporting Ancillary Airline Passenger Revenues

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The U.S. Department of Transportation (DOT or the Department) is proposing to collect revenue information in a more detailed manner regarding airline imposed fees from those air carriers meeting the definition of a large certificated air carrier. Many air carriers have adopted *a la carte* pricing with separate fees for such things as checked baggage, carry-on baggage, meals, on-board entertainment, internet connections, pillows, blankets, advance or upgraded seating, telephone reservations, early boarding, canceled or changed reservations, transportation of unaccompanied minors, pet transportation, third-party services such as hotel rooms, car rentals, and pick-up and delivery services, *et cetera.* The Department wants to make airline pricing more transparent to consumers and airline analysts. This action is in response to a Departmental initiative and responds to recommendations of the Government Accountability Office. Also, the Department is proposing to change the way it computes mishandled baggage rates from mishandled baggage reports per unit of domestic enplanements to mishandled bags per unit of checked bags. Fees for checked baggage have changed consumer behavior regarding the number of bags they check, skewing mishandled baggage rates. Finally, the Department is proposing to fill a data gap by collecting separate statistics for mishandled wheelchairs and scooters used by passengers with disabilities.

DATES: All comments must be received by September 13, 2011. Late filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments to Docket RITA 2011–0001 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier*: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

DOT will post all comments received, without change, to *http://www.regulations.gov,* including any personal information provided. If DOT acknowledgement of comments is desired, please include a pre-addressed, stamped postcard on which the docket number appears. We will date the postcard and mail it to you.

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Docket Management Facility, U.S. Department of Transportation, 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: Bernie Stankus, Office of Airline Information, RTS–42, Bureau of Transportation Statistics, Research and Innovative Technology Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or E-MAIL *bernard.stankus@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Ancillary Revenues

Ancillary airline revenues have increased from 2005 through 2009 and continued their increase in 2010. At the same time, actual passenger ticket revenues have shown a slight decrease. The following numbers were taken from the Bureau of Transportation Statistics' Transtats Web site (*http://www.transtats.bts.gov/Fields.asp?Table_ID=295* for Schedule P–1.2 *Statement of Operations* for large certificated airlines with over $20 million in annual operating revenues.

Revenue source	2005 (in millions)	2009 (in millions)	Percent change
Passenger Revenues	$93,633	$91,503	−2.28
Transport Related Revenues	28,729	31,007	7.93
Baggage	342	2,789	715.50
Cancellation Charges	841	2,373	182.16
Miscellaneous	2,216	5,107	130.46

In July 2010, the Government Accountability Office (GAO) issued a report titled GAO–10–785, *Commercial Aviation—Consumers Could Benefit from Better Information about Airline-Imposed Fees and Refundability of Government Imposed Taxes and Fees.* This report found that it is difficult to determine the total amount of fees that airlines are collecting from passengers. ''Currently revenues from fees other than baggage fees and reservation change and cancellation fees are reported in miscellaneous and other accounts that also include revenues from non-fee sources.'' (See page 34 of the GAO report.) Thus, policymakers and regulators lack the necessary detailed data to determine total revenues from airline imposed fees and the fees' impact on the industry. GAO recommended that DOT collect data on all the optional fees paid by passengers that relate to their trip in an identifiable format.

DOT is proposing a stand-alone reporting form to capture ancillary revenues. In order not to disrupt the various programs used by airline analysts to compute airline yields and passenger revenues, the Department's proposal will not change the current reporting of the other Form 41 financial reports. DOT proposes to define ancillary revenues as those charges paid by airline passengers that are not included in the standard ticket fare. Generally, all mandatory charges necessary for air transportation are included in the ticket price, but fees for optional services are not. Treasury regulations and IRS guidance provide that revenue from many airline-imposed fees for airline services are generally not subject to the 7.5 percent excise tax, including fees for checked baggage, early boarding, phone reservations, and on-board meals. On the other hand, amounts paid for other airline imposed fees that are required as a condition of receiving domestic air transportation, such as some reservation change and cancellation fees, fuel surcharges and peak travel day charges, are subject to the 7.5 percent excise tax in accordance with IRS guidance and applicable regulations (see page 21 GAO–10–785, July 2010). The Airline Tariff Publishing Company (ATPCO), the world leader in the collection and distribution of airline fare and fare-related data, has over two hundred sub codes for the items that the Department is proposing to define as ancillary airline revenues. The Department is not proposing to require the detailed breakout of all the charges identified by ATPCO, but is using the ATPCO list of charges as a reference in developing the new reporting form—Report of Ancillary Passenger Revenues. The Department is proposing to collect the following data on optional charges in that report:

1. Booking Fees, including fees for telephone reservations
2. Priority Check-In and Security Screening
3. Baggage
   First Checked Bag
   Second Checked Bag
   Excess Baggage (i.e., third checked bag or more)
   Overweight/Oversized Baggage/Sports Equipment
   Carry-On Baggage
4. In-Flight Medical Equipment
5. In-Flight Entertainment/Internet Access
6. Sleep Sets
7. In-Flight Food/Non Alcoholic Drinks
8. Alcoholic Drinks
9. Pets
10. Seating Assignments
11. Reservation Cancellation and Change Fees
12. Charges for Lost Tickets
13. Unaccompanied Minor/Passenger Assistance Fee
14. Frequent Flyer Points/Points Acceleration
15. Commissions on Travel Packages—Hotel/Car Rental/etc.
16. Travel Insurance
17. Duty-Free and Retail Sales
18. One-Time Access to Lounges
19. Other

DOT proposes that carriers that submit the quarterly Form 41, Schedule P–1.2 *Statement of Operations* would also submit a new quarterly Form 41, P–9 Schedule *Statement of Ancillary Revenues.* Carriers that submit the Semiannual Form 41, Schedule P–1.1 *Statement of Operations* would also submit a new semiannual Form 41, Schedule P–9.1 *Statement of Ancillary Revenues.* The new Reports of Ancillary Revenues will be designed to show the ancillary revenues received by the reporting carriers from their passengers. For instance, in a code-share arrangement, Carrier A markets the service and pays Carrier B a predetermined fee for operating a flight segment. Carrier A charges a $25 fee for each checked bag. The baggage fees collected from passengers by Carrier B are held for Carrier A. Carrier A would include these baggage fees in its Report of Ancillary Revenues.

The Department is requesting public comment on which items should be specifically identified as ancillary revenues, and the projected reporting burden for submitting a report of ancillary revenues in terms of costs and hours of reporting burden. Further, the Department requests public comment on how to best capture reporting of all ancillary fees. Should the Department include specific fee categories in the regulatory text? Or, specify in the regulatory text that ''all ancillary fees'' must be reported, with accompanying guidance on the reporting format and fee categories? How could the Department ensure that the fees categorized as ''other'' fees are most informative to the Department and to the consumer?

Mishandled Baggage Reports

The Department believes that the current matrix for comparing airline mishandled baggage performance is outdated. Airline passengers would

have better information to compare airline services if the matrix for mishandled baggage were changed to the number of the actual mishandled bags per unit of checked bags rather than the number of Mishandled Baggage Reports (MBRs) filed by passengers per unit domestic scheduled-service passengers. Passenger behavior was altered regarding the unit of bags checked when many air carriers began charging passengers for each bag that they check. The GAO reported that the introduction of baggage fees resulted in a decline of 40 to 50% in the number of checked bags with a corresponding 40% decline in the number of MBRs per 1,000 passengers (see page 25 of GAO–10–785, July 2010). Also, the ratio between checked bags and the number of passengers can vary greatly depending on the fees carriers charge. Moreover, there is not a direct relationship between the number of MBRs and the number of lost, stolen, delayed, damaged and pilfered bags because a single MBR could be submitted by a family with multiple mishandled bags. The proposed matrix would better inform passengers of their chances to retrieve their checked baggage and belongings in an acceptable and timely manner.

The Department is also interested in capturing data about the number of the mishandled wheelchairs/scooters per unit of wheelchairs/scooters transported in aircraft cargo. Many air travelers who use wheelchairs are reluctant to travel by air because of concern that the return of their wheelchairs or scooters will be delayed, or the wheelchair/scooter will be damaged or lost. However, we do not know the magnitude of the problem. The proposed data collection for mishandled wheelchairs/scooters is crucial to understanding the magnitude of the problem as this data is not available to us through other means. It is very important that passengers with mobility disabilities arrive at their destination with their wheelchair/scooter in good working order. Without these devices, they will have great difficulty in exiting the airport or may be confined to their hotel or place of visit. We invite interested persons to comment on this proposal. Should the rule be expanded to require data not only about wheelchairs and scooters transported in the aircraft cargo compartment but about all wheelchairs and scooters regardless of whether the devices are transported in the cabin or in the cargo compartment? Should the rule also apply to other mobility devices such as walkers? The Department plans to publish the data it receives from the carriers which would increase public awareness of the issue, provide passengers with disabilities a means by which to compare the overall mishandled wheelchair/scooter rates by carrier and create an added incentive for air carriers to treat these mobility devises with greater care.

Statutory and Executive Order Reviews

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 because of the substantial public and Congressional interest. 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 reaffirms the principles of Executive Order 12866 and seeks to create a regulatory process that ''strikes the right balance'' between what is needed to protect health, welfare, safety, and the environment and what is needed to foster economic growth, job creation, and competitiveness.

The Department is seeking public comment on the estimated costs and benefits of its proposal. To this end, the Department is seeking an open exchange of information between Department officials, transportation experts, industry representatives and members of the public. The Department believes this participation will lead to a better and more informed decision. We encourage those air carriers who would be covered by this proposal to provide comments to the Docket explaining the potential impact on their business operations. We are committed to selecting the least burdensome method to achieve the regulatory goals described above. By requesting public comments, we are hopeful that additional alternatives will be proposed which then can be reviewed by the Department's decisionmakers. We believe this process will provide the Department the maximum regulatory flexibility.

The regulatory evaluation finds that the benefits of the proposal appear to exceed its costs considering non-quantifiable benefits, such as providing data on fees that impact the Airport and Airway Trust Fund, and providing consumers with better data for comparing air carrier service performance. Also, airline passengers will likely be better informed about the existence of ancillary fees. This NPRM provides the public an opportunity to express their views and needs.

Cost/Benefit Analysis

Benefits

The ancillary revenue data collection would supply the Federal Aviation Administration (FAA) and Government Accountability Office (GAO) with information to assess the potential impact of these fees on the Airport and Airway Trust Fund. In the last few years, some carriers have adopted *a la carte* pricing for optional services. Airlines have also developed new services with separate charges such as in-flight wireless internet access, one-time admission to airport lounges, accelerated frequent flyer miles, etc. Airlines have been able to lower airfares while increasing overall revenues with the *a la carte* pricing and new services. At the same time, revenues to the Airport and Airway Trust Fund have slightly decreased.

A report of ancillary revenues should assist DOT and the Justice Department in evaluating the impact of proposed mergers and acquisitions. Presently, it is difficult, if not impossible, to determine the average total cost of air travel to consumers. Ancillary charges often are omitted from the total costs of tickets reported in the Passenger Origin-Destination Survey.

There is a range of bills in Congress that would impose taxes on various airline services. Because of the current Department of Transportation reporting requirements, GAO has been unable to accurately forecast the amount of revenues that these taxes would generate.

The change in the matrix to mishandled bags per unit of checked bags would give consumers more reliable information on the air carriers' performance regarding the treatment of baggage within their control. Under the current system, there is no direct relationship between the number of mishandled bags and the number of checked bags. Carriers report the number of MBRs that they receive from passengers. A mishandled baggage report may be filed for one bag or multiple bags. The denominator in the current matrix is enplaned passengers. A passenger may opt to travel with only carry-on baggage or may check multiple bags.

With the institution of baggage fees, the number of checked bags at some

carriers has declined by 40 to 50 percent. There has been a corresponding 40 percent decline (i.e., improvement) in the industry mishandled baggage rates. A large part of the improvement in the mishandled baggage rate appears to be related to the decrease in checked baggage, although the current matrix hides this fact. The proposed matrix would have a direct correlation between mishandled baggage and checked baggage. Separate breakout of mishandled wheelchairs/scooters would assist passengers with mobility disabilities in selecting air carriers with high probabilities in meeting their special needs.

Finally, there is a gap in the Department's data regarding the mishandling of wheelchairs and scooters. The proposed data will provide information to passenger with disabilities on which air carriers best meet their special needs.

The Department has not quantified the benefits of the ancillary revenue data collection, the change in the matrix to mishandled bags per unit of checked bags, or the data collection regarding mishandling of wheelchairs and requests comments on potential methods for quantifying benefits for any of these proposals, if possible.

Costs

The Department estimates that the one time programming cost to the industry would be just over $150,000 to report ancillary revenues to the Department. The approximately 77 air carriers would each incur about 40 hours of programming costs to capture the items that are considered ancillary revenues. The recurrent annual industry cost for submitting the new report is estimated at $100,000 or $700 per medium regional carrier and $1,400 for other Form 41 reporters.

The cost to the 18 air carriers that would have to collect data on checked and mishandled baggage is estimated to be approximately $180,000 or $10,000 per carrier. Most of the cost would be associated with developing a system for counting the number of gate-checked bags that are not scanned by the carrier when the passenger checks in for the flight. The Department also believes that the cost of the requirement to collect data on damage, delay or loss of wheelchairs or scooters transported in the aircraft cargo would be minimal for carriers, since we believe most carriers as a matter of good business practice already gather and maintain this information for their own purposes.

The Department seeks public comment on whether these cost estimates are accurate, and the extent to which air carriers gather and maintain this information for their own purposes.

B. Paperwork Reduction Act

Ancillary Revenues

This proposed action would increase the reporting burden on air carriers. DOT estimates a one-time programming effort of 40 hours per certificated air carrier to retrieve the required breakout of the reportable ancillary revenues from its accounting systems. After the programming effort is completed, there will be a recurrent reporting burden of approximately 10 hours per carrier to produce and submit each ancillary revenue report. Presently, there are 66 air carriers that would submit quarterly reports and 11 air carriers that would submit semiannual reports. Thus, the total first-year reporting burden would be 5,940 hours:

3,080 programming hours (77 carriers × 40 programming hours)

2,640 hours for quarterly submissions (66 carriers × 4 quarterly reports × 10 hours)

220 hours for semiannual submissions (11 carriers × 2 semiannual reports × 10 hours

The proposed reporting form to collect ancillary data would become a part of Form 41 financial data which is collected under the OMB number 2138–0013. The Department requests comments on the estimates of first year reporting burden.

Mishandled Baggage Reports

BTS anticipates a one-time reprogramming effort in changing the matrix from MBRs per 1,000 enplaned passengers to the number of mishandled bags per unit of checked bags. Most reporting carriers have these data in their systems or have the ability to gather the information. DOT estimates a range from 1 hour to 80 hours with an average of 20 hours per carrier to implement this proposed change. Total burden is estimated to be 360 hours for the 18 reporting air carriers.

The Department encourages air carriers to comment on these cost estimates.

C. Regulatory Flexibility Act

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

I certify that, if adopted, this rule will not have a significant economic impact on a substantial number of small entities. The Department has defined small entities as those carriers that operate strictly small aircraft (60 seats or less aircraft). This rule will impact only those carriers that operate large aircraft or have annual domestic passenger revenues of over $600 million dollars. The cost estimate to implement this rule is between $2,500 and $12,500 per carrier.

D. Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 (''Federalism'') and the Department has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Trade Agreements Act

This act prohibits agencies from setting standards that create unnecessary obstacles to foreign commerce of the United States. The Department believes this proposed rule will not impact foreign commerce.

F. Unfunded Mandates Reform Act of 1995

This Act requires agencies to prepare written assessment of costs, benefits, and other effects of a proposed rule that include a Federal mandate likely to result in the expenditure by State, local, or tribal government. This proposed rule imposes no expenditures on State, local, or tribal government. The estimated cost to the airline industry from this proposed rule would account for 0.0002 percent of total industry operating revenues.

G. Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda each April and October. The RIN Number 2139–AA13 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Parts 234 and 241

Air Carriers, Reporting, On-time statistics, Mishandled baggage, and Uniform system of accounts.

Accordingly, the Department of Transportation proposes to amend 14 CFR Chapter II as follows:

PART 234—[AMENDED]

1. The authority citation for Part 234 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 41101 and 41701.

2. Section 234.6 is revised to read as follows:

§ 234.6 Baggage-handling statistics.

Each reporting carrier shall report monthly to the Department on a domestic system basis, excluding charter flights, the total number of checked bags, including gate checked baggage, the number of wheelchairs and scooters transported in the aircraft cargo compartment, the total number of mishandled checked bags, including gate checked baggage, and the number of mishandled wheelchairs and scooters that were carried in the cargo compartment. The information shall be submitted to the Department within 15 days of the end of the month to which the information applies and must be submitted with the transmittal accompanying the data for on-time performance in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Information.

PART 241—[AMENDED]

3. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 41101, 41708, and 41709.

4. In part 241, the table titled ''List of Schedules in BTS Form 41'' in Section 22(a) is amended by adding entries for Schedule P–9, and P–9.1 to read as follows:

Section 22 General Reporting Instructions.

(a) * * *

LIST OF SCHEDULES IN BTS FORM 41

Schedule number	Title	Frequency	Applicability by carrier group		
			I	II	III
*	*	*	*	*	*
P–9	Statement of Ancillary Revenues	Q	(1)	x	x
P–9.1	Statement of Ancillary Revenues	SA	(2)	na	na
*	*	*	*	*	*

5. In part 241, the table titled ''Due Dates of Schedules in BTS Form 41 Report'' in Section 22(a) is amended by revising the entries for ''February 10'', ''May 10'', ''August 10'' and ''November 10'' to read as follows:

Section 22 General Reporting Instructions.

(b) * * *

DUE DATES OF SCHEDULES IN BTS FORM 41 REPORT

Dues dates [1]	Financial data on schedule number	Traffic and capacity data on schedule number
February 10	A, B–1, B–1.1, B–7, B–12, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–9, P–9.1, P–10.	
* *	* * * *	*
May 10 [2]	A, B–1, B–7, B–12, P1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–9, P–9.1.	
* *	* * * *	*
August 10	A, B–1, B1.1, B7, B–12, P–1.1, P1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–9, P–9.1.	
* *	* * * *	*
November 10	A, B–1, B7, B–12, P1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–9, P–9.1.	
* *	* * * *	*

[1] Due Dates falling on Saturday, Sunday or national holiday will become effective the first following work day.
[2] Reporting due dates on Form 41 schedules B and P are extended to March 30 if preliminary schedules are filed at the Department buy February 10.

* * * * *

6. In part 241, Section 24 is amended by adding Schedules P–9 and P–9.1 to read as follows:

Section 24 Profit and Loss Elements

* * * * *

Schedule P–9 *Statement of Ancillary Revenues*

(a) Section 24 Profit and Loss Elements

P–9 *Statement of Ancillary Revenues*

(a) This schedule shall be filed quarterly by all Group II and Group III air carriers and by Group I air carriers that have annual operating revenues of $20 million or more.

(b) Data reported on this schedule shall be for ancillary revenues as defined as those charges paid by airline passengers that are not included in the passenger revenues.

(c) Carriers shall submit the data using a comma separated value format as follows:

(1) Carrier code;

(2) Period end date (yyyymmdd);

(3) Booking Fees (includes fees for telephone reservations, paper tickets, delivery);

(4) Priority Check-In and Security Screening;

(5) First Checked Bag;
(6) Second Checked Bag;
(7) Excess Baggage (i.e., third checked bag or more);
(8) Overweight/Oversized Baggage/Sports Equipment;
(9) Carry-On Baggage;
(10) In-Flight Medical Equipment;
(11) In-Flight Entertainment/Internet Access;
(12) Sleep Sets;
(13) In-Flight Food/Non Alcoholic Drinks;
(14) Alcoholic Drinks;
(15) Pets;
(16) Seating Assignments;
(17) Reservation Cancellation and Change Fees;
(18) Charges for Lost Tickets;
(19) Unaccompanied Minor/Passenger Assistance Fee;
(20) Frequent Flyer Points/Points Acceleration (includes fees for purchasing travel with points or fees for purchases with points close to departure dates; Points Acceleration are fees for increased frequent flyer point accumulation);
(21) Commissions on Travel Packages—Hotel/Car Rental/etc.;
(22) Commissions on Travel Insurance;
(23) Duty-Free and Retail Sales;
(24) One-Time Access to Lounges; and
(25) Other.

P–9.1 *Statement of Ancillary Revenues*

(a) This scheduled shall be filed semiannually by Group I air carriers with annual operating revenues below $20 million.

(b) Data reported on this schedule shall be for ancillary revenues as defined as those charges paid by airline passengers that are not included in the passenger revenues.

(c) Carriers shall submit the data using a comma separated value format as follows:
(1) Carrier code;
(2) Period end date (yyyymmdd);
(3) Booking Fees (includes fees for telephone reservations, paper tickets, delivery);
(4) Priority Check-In and Security Screening;
(5) First Checked Baggage;
(6) Second Checked Baggage;
(7) Excess Baggage (i.e., third checked baggage or more);
(8) Overweight/Oversized Baggage/Sports Equipment;
(9) Carry-On Baggage;
(10) In-Flight Medical Equipment;
(11) In-Flight Entertainment/Internet Access;
(12) Sleep Sets;
(13) In-Flight Food/Non Alcoholic Drinks;
(14) Alcoholic Drinks;
(15) Pets;
(16) Seating Assignments;
(17) Reservation Cancellation and Change Fees;
(18) Charges for Lost Tickets;
(19) Unaccompanied Minor/Passenger Assistance Fee;
(20) Frequent Flyer Points/Points Acceleration (includes fees for purchasing travel with points or fees for purchases with points close to departure dates; Points Acceleration are fees for increased frequent flyer point accumulation);
(21) Commissions on Travel Packages—Hotel/Car Rental/etc.;
(22) Commissions on Travel Insurance;
(23) Duty-Free and Retail Sales;
(24) One-Time Access to Lounges; and
(25) Other.

* * * * *

Issued in Washington, DC, on July 7, 2011 under authority delegated by 14 CFR 385.19(a).

Anne Suissa,

Director, Office of Airline Information.

[FR Doc. 2011–17652 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–HY–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2010–1076; FRL–9439–4]

RIN 2060–AQ97

Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing criteria for determining whether onboard refueling vapor recovery (ORVR) is in widespread use for purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. The EPA is also proposing to determine the date at which such widespread use of ORVR will occur. Once the Administrator has determined that widespread use has occurred, the Administrator may waive Clean Air Act (CAA or Act) statutory requirements for states to implement Stage II gasoline vapor recovery systems at gasoline dispensing facilities in areas classified ''Serious,'' ''Severe,'' or ''Extreme'' for nonattainment of the ozone national ambient air quality standard (NAAQS). Based on the proposed criteria, the EPA is proposing to determine that June 30, 2013, will be the date when ''widespread use'' will occur and the Stage II waiver will be effective. This rulemaking was identified as an example of examining rules to make sure they are still achieving the environmental benefit that was originally intended.

DATES: Comments must be received on or before September 13, 2011.

Public Hearing: If anyone contacts us requesting to speak at a public hearing on or before August 1, 2011, we will hold a public hearing. Additional information about the hearing would be published in a subsequent **Federal Register** notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–1076, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epamail.epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2010–1076
- *Fax:* 202–566–1541, Attention Docket ID No. EPA–HQ–OAR–2010–1076
- *Mail:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA–HQ–OAR–2010–1076, Environmental Protection Agency, 1301 Constitution Ave., NW., Washington, DC 20460, Mailcode: 6102T. Please include two copies if possible.
- *Hand Delivery:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA–HQ–OAR–2010–1076, Environmental Protection Agency in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–1076. The 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 the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

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

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Dail, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail code C539–02, Research Triangle Park, NC 27711, telephone (919) 541–2363; fax number: 919–541–0824; e-mail address: *dail.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities directly affected by this action include states (typically state air pollution control agencies) and, in some cases, local governments that develop air pollution control rules that apply to areas classified as ''Serious,'' ''Severe,'' or ''Extreme'' for nonattainment of the ozone NAAQS. Individuals and companies that operate gasoline dispensing facilities may be indirectly affected by virtue of state action in State Implementation Plans (SIPs) that implement provisions resulting from final rulemaking on this action; many of these sources are in the following groups:

Industry group	SIC [a]	NAICS [b]
Gasoline stations	5541	447110, 447190

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

B. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *regulations.gov* or email. 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 the 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:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. How can I find information about a possible public hearing?

Public Hearing: To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela S. Long, Air Quality Policy Division, Mail code C504–03, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–0641, facsimile number (919) 541–5509, email address: *long.pam@epa.gov.*

D. How is this preamble organized?

The information presented in this preamble is organized as follows.

I. General Information
  A. Does this action apply to me?
  B. What should I consider as I prepare my comments for the EPA?
  C. How can I find information about a possible public hearing?
  D. How is this preamble organized?
II. Background
  A. What requirements for Stage II gasoline vapor recovery apply for ozone nonattainment areas?
  B. Stage II Vapor Recovery Systems
  C. Onboard Refueling Vapor Recovery (ORVR) Systems
  D. Incompatibility Between Some Vapor Recovery Systems
  E. Analytical Approach to Determining Whether ORVR Is In Widespread Use
III. Proposed Action
IV. Estimated Cost Savings
V. Statutory and Executive Order Reviews
  A. Executive Orders 12866 and 13563: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Determination Under Section 307(d)
VI. Statutory Authority

II. Background

A. What requirements for Stage II gasoline vapor recovery apply for ozone nonattainment areas?

Under CAA section 182(b)(3), Stage II vapor recovery systems are required to be used at larger gasoline dispensing facilities located in ''Serious,'' ''Severe,'' and ''Extreme'' nonattainment areas for ozone.[1] Based on deadlines established in the Act, within 24 months from the effective date of the initial area designation and classification, states must adopt a Stage II program into their SIPs, and the controls must be installed according to specified deadlines following state rule adoption. For existing facilities, the installation deadlines depend on the date the facilities were built and the monthly volume of gasoline dispensed. *See* CAA sections 182(b)(3)(A)–(B), and 324(a)–(c).[2]

However, the CAA provides discretionary authority to the EPA Administrator to, by rule, revise or waive the section 182(b)(3) Stage II requirement after the Administrator determines that ORVR is in widespread use throughout the motor vehicle fleet. *See* CAA section 202(a)(6). The EPA first began the phase-in of ORVR by requiring that 40 percent of passenger cars manufactured in model year 1998 be equipped with ORVR. The ORVR requirement for passenger cars was increased to 100 percent by model year 2000. Phase-in continued for other vehicle types and ORVR has been a requirement on virtually all new gasoline-powered motor vehicles (passenger cars, light trucks, and complete heavy-duty gasoline powered vehicles under 10,000 lbs gross vehicle weight rating (GVWR)) sold since model year 2006. *See* 40 CFR part 86. Currently, ORVR-equipped vehicles comprise approximately 64 percent of the in-service vehicle fleet nationwide, and account for around 74 percent of the vehicle miles traveled (VMT) in the nationwide fleet. The percentage of non-ORVR vehicles and the percentage of VMT driven by those vehicles declines each year as these older vehicles wear out and are removed from service. Since certain vehicles are not required to have ORVR, including motorcycles and incomplete heavy-duty gasoline powered truck chassis, under current requirements the nationwide motor vehicle fleet would never be entirely equipped with ORVR.

The EPA has been evaluating appropriate criteria for determining when widespread use of ORVR has occurred and for granting waivers to the section 182(b)(3) Stage II requirement and has issued policy memoranda addressing the issue in limited contexts.[3] As discussed in these memoranda, the EPA interprets section 202(a)(6) of the CAA to give discretion to the Administrator to revise or waive the section 182(b)(3) requirement when widespread use occurs either through a single national rulemaking or separate determinations for specific areas. By its terms, section 202(a)(6) does not specify the scope or type of motor vehicle fleet for which the EPA must find ORVR is in widespread use before revising or waiving the section 182(b)(3) Stage II requirement. Nor does the statutory language preclude revising or waiving the requirement for individual ''Serious,'' ''Severe'' or ''Extreme'' nonattainment areas, or distinguishing between different types of areas (e.g., the EPA could determine widespread use has occurred at different times for different areas, and revise or waive section 182(b)(3) Stage II requirements accordingly). Therefore, the EPA retains significant discretion in this matter.

Based on our evaluation of the available data and appropriate criteria for determining that widespread use of ORVR has occurred, the EPA is proposing a determination of ORVR widespread use and a general waiver of the section 182(b)(3) Stage II requirement effective nationwide, on June 30, 2013. If promulgated, this would apply to any area that currently requires a Stage II program under section 182(b)(3). Additionally, any nonattainment area classified ''Serious,'' ''Severe,'' or ''Extreme'' for the first time after approximately January 1, 2011, would not be required to adopt and implement a new Stage II program under section 182(b)(3). This is because such areas, under the terms of section 182(b)(3), would not be required to implement Stage II programs until 2 and a half years after such classification, which would be the effective date of the proposed widespread use determination and section 182(b)(3) waiver.

We also propose that individual states (with or without existing Stage II programs) may separately submit SIP revisions to the EPA that demonstrate that ORVR widespread use has occurred (or will occur) on a date earlier than June 30, 2013, for areas in their states, and request that the EPA revise or waive the section 182(b)(3) requirement as it applies to only those areas. Such a separate demonstration would require an EPA rulemaking and the Administrator's approval before it could be effective. States may use the procedures discussed in Section II E. titled Analytical Approaches to Determining Whether ORVR is in Widespread Use with area-specific data rather than the generalized, national data shown in Table 1 in that section.

Subsequent to the effective waiver date of the section 182(b)(3) Stage II requirement, areas currently implementing SIP-approved Stage II programs, as a result of obligations under the 1-hour or 1997 8-hour ozone NAAQS, would be required to continue implementing these programs until an EPA SIP revision approves removal of the requirement from the state's ozone implementation plan. Although the EPA is proposing to determine that ORVR is in widespread use as of June 30, 2013, states may prepare and submit SIP revisions before that date so that the EPA can review and approve such SIP revisions as soon as possible after June 30, 2013.

[1] *See* CAA section 182(b)(3), 42 U.S.C. 7511a(b)(3). Originally, the section 182(b)(3) Stage II requirement also applied in all Moderate ozone nonattainment areas. However, under section 202(a)(6) of the CAA, 42 U.S.C. 7521(a)(6), the requirements of section 182(b)(3) no longer apply in Moderate ozone nonattainment areas after EPA promulgated ORVR standards on April 6, 1994, 59 FR 16262, codified at 40 CFR parts 86 (including 86.098–8), 88 and 600. Under implementation rules issued in 2002 for the 1997 8-hour ozone standard, EPA retained the Stage II-related requirements under section 182(b)(3) and as they applied for the 1-hour ozone standard. 40 CFR 51.900(f)(5) and 40 CFR 51.916(a).

[2] Section 182(b)(3)(B) has the following effective date requirements for implementation of Stage II after the adoption date by a state of a Stage II rule: 6 months after adoption of the state rule, for gas stations built after the enactment date (which for newly designated areas would be the designation date); 1 year after adoption date, for gas stations pumping at least 100,000 gal/month based on average monthly sales over 2-year period before adoption date; and 2 years after adoption, for all others.

[3] *See,* e.g., Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, and Margo Tsirigotis Oge, Director, Office of Transportation and Air Quality, to Regional Air Division Directors, ''Removal of Stage II Vapor Recovery in Situations Where Widespread Use of Onboard Refueling Vapor Recovery is Demonstrated'' (Dec. 12, 2006); *see* also, Memorandum from Stephen D. Page and Margo Tsirigotis Oge, ''Removal of Stage II Vapor Recovery from Refueling of Corporate Fleets'' (Nov. 28, 2007). Both of these memoranda are included in the docket for this proposed rulemaking, docket number EPA–HQ–OAR–2010–1076.

To approve a SIP revision removing Stage II provisions, the EPA must ensure that such removal would not interfere with other applicable CAA requirements under section 110(l), which precludes the Administrator from approving a SIP revision if it would interfere with applicable CAA requirements (including attainment and maintenance of the ozone NAAQS). This is discussed in more detail in Section III of this preamble. Of course, even after the EPA takes final action to find widespread use of ORVR has occurred and issues a waiver of the section 182(b)(3) requirement, states remain free under CAA section 116 to choose to implement Stage II programs in any area, and would not be forced to remove existing Stage II provisions from a SIP.

B. Stage II Vapor Recovery Systems

When an automobile or other vehicle is brought into a service station to be refueled, the empty portion of the fuel tank on the vehicle contains gasoline vapors. When liquid gasoline is pumped into the partially empty gas tank the vapors are forced out of the tank as the tank fills with liquid gasoline. Where air pollution control technology is not used, these vapors are emitted into the air. In the atmosphere, these vapors can react with sunlight, nitrogen oxides and other volatile organic compounds to form ozone. In order to prevent this, the 1990 CAA Amendments added section 182(b)(3), requiring owners or operators of gasoline dispensing facilities in Moderate, Severe or Extreme ozone nonattainment areas to install and operate a system for recovery of gasoline vapor from the fueling of motor vehicles. This requirement only applies to facilities that sell more than a specified number of gallons per month and is set forth in sections 182(b)(3)(A)–(C) and 324(a)–(c). States were required to adopt rules for this requirement no later than 2 years after the enactment of the 1990 CAA Amendments. As a consequence of these provisions, gas station owners and operators in Moderate, Severe, or Extreme nonattainment areas have installed these vapor control systems, known as ''Stage II controls.'' [4]

Stage II control systems often have a rubber boot around the gasoline nozzle spout that fits snugly up to a vehicle's gasoline fill pipe during refueling of the vehicle. Gasoline vapors from the fill pipe are forced into this sleeve (rubber boot) rather than emitted into the air. Typically, a separate hose allows the vapor to flow back into the underground gasoline storage tank. A concentric hose (one hose inside another) is commonly used; gasoline flows through one of the hoses into the vehicle and vapors flow back through the other hose into the dispenser and from there through underground piping to the underground storage tank.

There are two basic approaches to Stage II vapor recovery: balance and vacuum assist. With a balance system, when gasoline in the underground tank is pumped into a vehicle, a positive pressure differential is created between the vehicle tank and the underground tank. This pressure differential draws the gasoline vapors from the vehicle fill pipe through the rubber boot and the concentric hoses and underground piping into the underground tank. This is known as a balance system, since the gasoline vapors from the vehicle tank flow into the underground tank to balance pressures.

Another type of Stage II system uses a vacuum pump on the vapor return line to help draw vapors from the automobile fill pipe into the underground storage tank. An advantage of this type of system is that the rubber boot around the nozzle can be smaller and lighter (or not used at all) and still draw the vapors into the vapor return hose. This makes for an easier-to-handle nozzle, which is popular with customers. This type of Stage II system is known as a vacuum assist system.

The in-use efficiency of a Stage II program is directly proportional to the proper installation, operation, and maintenance of the control equipment at the gasoline dispensing facilities.[5] Damaged, missing, or improperly operating components or systems can significantly degrade the control effectiveness of a Stage II system. Experience has shown that frequent inspections are necessary to ensure that the Stage II equipment is working as designed. Although new Stage II equipment may be required to achieve 95 percent control effectiveness at certification, studies have shown that in-use control efficiency depends on frequent inspection by state agencies and operator actions. The EPA guidance specifies minimum training, inspection, and testing criteria, and most states have adopted and supplemented these as deemed necessary for balance and vacuum assist systems.[6] However, in-use effectiveness ultimately depends on the consistency of inspections, follow-up by state agencies, and follow through by operators to perform inspections and conduct maintenance in a correct and timely manner. The EPA studies have calculated in-use efficiencies of 92 percent with semi-annual inspections, 86 percent with annual inspections and 62 percent with minimal or less frequent state inspections.[7] In-use Stage II vapor recovery system efficiency depends heavily on inspection frequency and maintenance efforts and the vigilance of station owners and states in these areas. Thus, the in-use effectiveness of Stage II within any state or nonattainment area may vary over time. Nonetheless, for over 15 years this technology has provided substantial VOC emission reductions in ozone nonattainment areas, which needed those reductions to attain the ozone NAAQS as well as reductions in air toxic emissions such as benzene.

C. Onboard Refueling Vapor Recovery (ORVR) Systems

In addition to Stage II controls, the 1990 CAA Amendments required another method of controlling these emissions. Section 202(a)(6) of the CAA requires an onboard system of capturing vehicle refueling emissions, commonly referred to as an ORVR system.[8] ORVR consists of an activated carbon canister installed in the vehicle into which vapors being expelled from the vehicle fuel tank are forced to flow. There the vapors are captured by the activated carbon in the canister. When the engine is started, the vapors are drawn off of the activated carbon and into the engine where they are burned as fuel. The EPA promulgated ORVR standards on April 6, 1994, 59 FR 16262.

Section 202(a) (6) of the CAA required that the EPA's ORVR standards apply to light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards were promulgated, and that ORVR systems provide a minimum evaporative emission capture efficiency of 95 percent. Section 202(a)(6) also provided that upon promulgation of the ORVR

[4] This designation is to distinguish them from vapor recovery systems on the transport tanker trucks that deliver gasoline to the service stations, which are known as Stage I systems. Stage I systems direct vapors from the underground storage tank at the service station back into the tanker truck as the underground tank is filled with liquid gasoline from the tanker truck.

[5] The Petroleum Equipment Institute has published recommended installation practices (PEI/RP300–93) and most states require inspection, testing, and evaluation before a system is commissioned for use.

[6] ''Enforcement Guidance for Stage II Vehicle Refueling Control Programs'' U.S. EPA, Office of Air and Radiation, Office of Mobile Sources, December 1991.

[7] ''Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling at Gasoline Dispensing Facilities Volume I: Chapters'' EPA–450/3–91–022a, November 1991.

[8] Unlike Stage II, which is a requirement only in ozone nonattainment areas, ORVR requirements apply to vehicles everywhere. More detail on ORVR is available at *http://www.epa.gov/otaq/orvr.htm.*

rules, Moderate ozone nonattainment areas are no longer subject to the section 182(b)(3) Stage II requirement. However, the section 182(b)(3) Stage II requirement continues to apply for ''Serious,'' ''Severe,'' and ''Extreme'' ozone nonattainment areas, unless and until under section 202(a)(6) the EPA finds that ORVR is in widespread use in the motor vehicle fleet and issues a rule waiving the section 182(b)(3) Stage II requirement.

Automobile manufacturers began installing ORVR on new passenger cars in 1998 when 40 percent of new cars were required to have ORVR. The percentage of new cars with ORVR increased to 80 percent in 1999 and 100 percent in 2000. ORVR for light duty trucks and vans (<6000 lbs GVWR began to phase in during 2001 with 40 percent of such new vehicles required to have ORVR in 2001, 80 percent in 2002 and 100 percent in 2003. New heavier vehicles (6001–8500 lbs GVWR) were required to have 40 percent with ORVR by 2004, 80 percent by 2005 and 100 percent by 2006. New trucks up to 10,000 lbs GVWR manufactured as a complete chassis were all required to have ORVR by 2006. So, after 2006, most new gasoline-powered vehicles less than 10,000 lbs GVWR are required to have ORVR.

ORVR does not apply to all vehicles, but those not covered by the ORVR requirement comprise a small percentage of the gasoline-powered highway vehicle fleet (approximately 1.5 percent). The EPA estimates that 60 to 65 percent of vehicles currently on the road have ORVR.[9] This percentage will increase over time as older cars are replaced by new cars. However, under the current regulatory construct, it is likely that there will always be a small percentage of non-ORVR vehicles (light-duty or otherwise) on the roads, and therefore there will likely always be some very small percentage of gasoline refueling emissions that could not be captured by ORVR controls.

Even prior to the EPA's adoption of ORVR requirements, in 1993 the EPA adopted Onboard Diagnostic (OBD) System requirements for passenger cars and light trucks, and eventually did so for heavy-duty gasoline vehicles up to 14,000 lbs GVWR.[10] These systems are designed to monitor the in-use performance of various vehicle emission control systems and components including evaporative emission controls.[11] ORVR systems are basically a subset of evaporative emission systems because they share the same vapor lines, purge valves, purge lines, and activated carbon canister. OBD II systems were phased in for these vehicle classes over the period from 1994–1996 for lighter vehicles and 2005–2007 for heavy-duty gasoline vehicles, so during the same time frame that manufacturers were implementing ORVR into their vehicles, they already had implemented or were implementing OBD II systems.

In 2000, the EPA published a report addressing the effectiveness of OBD II control systems.[12] This study concluded that enhanced evaporative and ORVR emission control systems are durable and low emitting relative to the FTP (Federal Test Procedure) enhanced evaporative emission standards and that OBD II evaporative emissions checks are a suitable replacement for functional evaporative emission tests in state inspection/maintenance programs.

D. Incompatibility Between Some Vapor Recovery Systems

When an ORVR vehicle is fueled at a service station equipped with a vacuum assist Stage II vapor recovery system, a lack of compatibility between the two controls may actually cause the emission reduction of the two systems together to be less than the emission reduction achieved by either system alone. The problem arises when the ORVR canister captures the gasoline emissions from the motor vehicle fuel tank. Instead of drawing vapor-laden air from the vehicle fuel tank into the underground storage tank, the vacuum pump of the Stage II system draws fresh air into the underground storage tank. The fresh air causes gasoline in the underground tank to evaporate inside the underground tank and thus creates an increase in pressure in the underground storage tank. As a result, gasoline vapors may be forced out of the underground storage tank vent pipe into the ambient air. This incompatibility can result in a 1 to 10 percent decrease in control efficiency over what would be achieved by either Stage II or ORVR alone. The decrease in efficiency varies depending on the vacuum assist technology design (including the ratio of volume of air drawn into the underground tank compared to the volume of gasoline dispensed), the gasoline Reid vapor pressure, the air and gasoline temperatures, and the fraction of throughput dispensed to ORVR vehicles. There are various technologies that address this incompatibility, such as nozzles that sense when fresh air is being drawn into the underground storage tank and stop the air flow. Another solution is the addition of processors on the underground storage tank vent pipe that capture or destroy the gasoline vapor emissions from the vent pipe. Installing these technologies adds to the expense of the control systems and is in some cases a reason to remove Stage II systems.

E. Analytical Approach to Determining Whether ORVR Is in Widespread Use

The EPA has considered several possible analytical approaches to determining when and whether ORVR is in widespread use in the motor vehicle fleet. The approach the EPA proposes to use here is to focus on the volume of gasoline that is dispensed into vehicles equipped with ORVR, and to compare the emissions reductions achieved by ORVR alone to the reductions that can be achieved by Stage II controls alone.

Table 1 shows information related to the penetration of ORVR in the national motor vehicle fleet projected to 2020. The overall efficiency of ORVR at reducing refueling emissions increases as older vehicles are replaced by newer ORVR-equipped vehicles. Overall ORVR efficiency is shown in column 5 of Table 1 and is determined by multiplying the fraction of gasoline dispensed into ORVR-equipped vehicles by ORVR's 98 percent control efficiency.

[9] *See* EPA Memorandum ''Onboard Refueling Vapor Recovery Widespread Use Assessment.'' A copy of this memorandum is located in the docket for this action, EPA–HQ–OAR–2010–1076.

[10] *See* **Federal Register** at 58 FR 9468 published February 19, 1993, and subsequent amendments and the latest OBD regulations at 40 CFR part 86.1806–05 for program requirements in various years.

[11] The OBD system monitors virtually every component that can affect the emission performance of the vehicle to ensure that the vehicle remains as clean as possible over its entire life. If a problem is detected, the OBD system illuminates a warning lamp on the vehicle instrument panel to alert the driver. This warning lamp typically contains the phrase ''Check Engine'' or ''Service Engine Soon.'' The system will also store important information about the detected malfunction so that a repair technician can accurately find and fix the problem. Also, OBD system codes are interrogated and evaluated in over 30 state operated vehicle emission inspection/maintenance programs.

[12] ''Effectiveness of OBD II Evaporative Emission Monitors—30 Vehicle Study,'' EPA 420–R–00–018, October 2000.

TABLE 1—PROJECTED PENETRATION OF ORVR IN THE NATIONAL VEHICLE FLEET BY YEAR

1	2	3	4	5
Calendar year	Vehicle population percentage	VMT percentage	Gasoline dispensed percentage	ORVR efficiency percentage
2006	39.5	48.7	46.2	45.3
2007	45.3	54.9	52.5	51.5
2008	50.1	60.0	57.6	56.4
2009	54.3	64.5	62.1	60.9
2010	59.0	69.3	66.9	65.6
2011	63.6	73.9	71.5	70.1
2012	67.9	78.0	75.6	74.1
2013	71.7	81.6	79.3	77.7
2014	75.2	84.6	82.6	80.9
2015	78.4	87.2	85.3	83.6
2016	81.2	89.4	87.7	85.9
2017	83.6	91.2	89.7	87.9
2018	85.6	92.7	91.3	89.5
2019	87.5	93.9	92.7	90.8
2020	89.0	94.9	93.9	92.0

See the EPA Memorandum ''Onboard Refueling Vapor Recovery Widespread Use Assessment'' in the docket (number EPA–HQ–OAR–2010–1076) addressing details on issues related to values in this table.

Note: In this table, the columns have the following meaning.

1. Calendar year that corresponds to the percentages in the row associated with the year.
2. Percentage of the gasoline-powered highway vehicle fleet that have ORVR.
3. Percentage of vehicle miles traveled (VMT) by vehicles equipped with ORVR.
4. Amount of gasoline dispensed into ORVR-equipped vehicles as a percentage of all gasoline dispensed to highway motor vehicles.
5. Percentage from the same row in column 4 multiplied by 0.98.[13]

The EPA estimates that the amount of control that ORVR alone would need to achieve to be equivalent to the amount of control Stage II alone would achieve is 77.4 percent. This estimate is based on the expected in-use control efficiency for a typical Stage II program in nonattainment areas under the hypothetical scenario that ORVR does not exist. The EPA estimates that nationally in areas where basic Stage II systems are used the control efficiency of Stage II gasoline vapor control systems is 86 percent. The use of this value depends on the assumption that annual inspections and appropriate maintenance are conducted in a correct and timely manner. This control efficiency is achieved only at refueling stations where a Stage II system is required to be installed, so not all of the gasoline dispensed in a nonattainment area is controlled by a Stage II system. The EPA estimates that the percentage of gasoline dispensed in an area that is covered by Stage II controls is 90 percent.[14] Multiplying the estimated efficiency of Stage II systems (86 percent) by the estimated fraction of gasoline dispensed in nonattainment areas from Stage II-equipped gasoline pumps yields an estimate of the area-wide control efficiency of Stage II programs of 77.4 percent ($0.90 \times 0.86 = 0.774$ or 77.4 percent). Table 1 indicates this level of control efficiency is expected to be achieved between the end of calendar year 2012 and the end of 2013. The EPA expects ORVR alone to achieve emissions reductions equal to Stage II alone during calendar year 2013; therefore, the EPA is proposing to determine that ORVR will be in widespread use by June 30, 2013, or the midpoint of calendar year 2013.

We also observe from Table 1 that by the end of calendar year 2012 more than 75 percent of gasoline will be dispensed into ORVR-equipped vehicles. The EPA believes that this percentage of ORVR coverage (>75 percent) is substantial enough to inherently be viewed as ''widespread'' under any ordinary understanding of that term. The dictionary defines ''widespread'' as meaning ''widely diffused or prevalent.'' Webster's Ninth Collegiate Dictionary, 1348 (1986). Seventy-five percent serves as a reasonable benchmark for this threshold, as it is substantially more than a majority value, and as it is not necessary for something to reach or approach a threshold of 100 percent for it to become ''prevalent,'' which is in turn defined as ''generally or widely accepted, practiced or favored.'' *Id.,* at 933. In Table 1, the percentage of VMT by ORVR-equipped vehicles (column 3) and the amount of gasoline dispensed into ORVR-equipped vehicles (column 4) reach or exceed 75 percent between the end of year 2011 and end of 2012. The EPA believes this provides further support for establishing a widespread use date after the end of calendar year 2012.

III. Proposed Action

The EPA is proposing to determine that ORVR widespread use will occur at the mid-point in the 2013 calendar year, June 30, 2013. The EPA is proposing June 30, 2013, as the effective date for both the determination of ORVR widespread use and a waiver of the CAA section 182(b)(3) Stage II requirement for ''Serious,'' ''Severe'' and ''Extreme'' ozone nonattainment areas.

This ORVR widespread use determination and section 182(b)(3) waiver would apply to the entire country, including areas that are not now classified as ''Serious,'' ''Severe,'' or ''Extreme'' for ozone nonattainment but that may in the future be classified as ''Serious,'' ''Severe,'' or ''Extreme''

[13] Based on tests of over 1000 in-use ORVR-equipped vehicles, the average in-use efficiency of ORVR is 98 percent. The legal requirement for ORVR is 95 percent efficiency. Thus, the actual reported control achieved in practice is greater than the statutorily required level of control.

[14] *See* section 4.4.3 (especially Figure 4–14 and Table 4–4) in ''Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume I: Chapters,'' EPA–450/3–91–022a, November 1991. A copy of this document is located in the docket for this action EPA–HQ–OAR–2010–1076. This is based on annual enforcement inspections and on allowable exemptions of 10,000/50,000 gallons per month as described in section 324a of the CAA. EPA recognizes that these two values vary by state and that in some cases actual in-use efficiencies, prescribed exemption levels, or both may be either higher or lower.

(e.g., a current ozone nonattainment area that may be reclassified to ''Serious,'' ''Severe,'' or ''Extreme'' as a result of a state's request or as a consequence for failing to attain the ozone standard by the specified attainment date).

If promulgated, the ORVR widespread use determination and section 182(b)(3) waiver determination would not obligate states to remove any existing Stage II vapor recovery requirements. For states that choose to remove the program, they will need to ensure that removal of the program does not interfere with attainment and maintenance of the NAAQS per CAA section 110(1). Using the effective date of an ORVR widespread use determination and waiver of the section 182(b)(3) Stage II requirement, states that wish to act upon the Stage II waiver and remove existing EPA-approved Stage II requirements from their SIPs would need to submit a SIP revision requesting the EPA to approve such action that is effective after the June 30, 2013, date. States would not need to wait until June 30, 2013, to submit such SIP revision subject to the provisions of CAA section 110(1).

In their SIP analysis, states may elect to conduct area-specific analyses, specifying parameters that are reflective of the types and ranges of equipment and operating patterns in use in the relevant area. Such an individualized analysis performed by a state may demonstrate that there are benefits to retaining the program beyond the widespread use date established by the EPA through national analysis. States may choose to continue to require or enhance Stage II controls in a particular area if they continue to achieve air quality benefits. Jurisdictions that choose to continue using Stage II systems after the widespread use date should consider taking appropriate actions to correct any excess emission incompatibility between ORVR and vacuum assist Stage II systems.

Section 110(l) precludes the Administrator from approving a SIP revision if it would interfere with applicable CAA requirements (including, but not limited to, attainment and maintenance of the ozone NAAQS and achieving reasonable further progress). Some states may find that by removing Stage II requirements they are reducing the overall level of reductions for which they have previously obtained credit. Such states would need to show that foregoing any additional VOC emissions reductions resulting from Stage II would not interfere with attaining and maintaining the ozone NAAQS in violation of section 110(l). In such circumstances it is possible that additional emissions reductions may be needed to offset the removal of Stage II. It should also be noted that removing Stage II may affect mobile source emissions budgets, so we urge states to consult with the state and local transportation agencies. States could choose to keep Stage II for an additional period of time to allow further ORVR penetration in the motor vehicle fleet or to obtain equivalent emissions reductions from other sources.

In previous memoranda, the EPA provided guidance to states on removing Stage II at refueling facilities dedicated to certain segments of the motor vehicle fleet (e.g., new automobile assembly plants, rental car facilities, E85 dispensing pumps, and corporate fleet facilities). In these specific cases where all or nearly all of the vehicles being refueled are ORVR-equipped, the EPA could conservatively conclude that widespread use of ORVR had occurred in these fleets. We indicated that we could approve a SIP revision removing Stage II requirements from these facilities with a demonstration that 95 percent of the fleet being refueled is equipped with ORVR.[15] This guidance was based on the EPA's assessment that removing Stage II controls at facilities meeting this criterion would not result in a significant increase in VOC emissions in the nonattainment area and thus would likely satisfy the conditions of CAA section 110(l). The EPA continues to believe this is sound guidance in areas where Stage II is currently being implemented, and is unaffected by the national widespread use determination proposed in this notice.

The EPA is also proposing that states may demonstrate that ORVR widespread use has occurred in specific areas sooner than the general, national date of June 30, 2013. States would do so by applying the same rationale the EPA is proposing to apply to the national fleet characteristics to area-specific motor vehicle fleet information. A state that provides such a demonstration may request that the Administrator establish a different effective date for waiver of the section 182(b)(3) requirement in a specific area. If the Administrator grants such a waiver for an area currently implementing a Stage II program, the state may request removal of the program from the SIP subject to the constraints of other applicable provisions of law.

States in the Ozone Transport Region (OTR) are also subject to a separate Stage II-related requirement. Under section 184(b)(2) of the CAA (42 U.S.C. 7511c(b)(2)), all areas in the OTR, both attainment and nonattainment areas, must implement either Stage II or measures that achieve comparable emissions reductions. This independent requirement is not affected by any widespread use determination or waiver of the section 182(b)(3) Stage II requirement granted under section 202(a)(6). The section 184(b)(2) Stage II-related requirement for the OTR will continue to remain in place even after the ORVR widespread use determination and section 182(b)(3) waiver effective date. This is because the section 184(b)(2) requirement does not impose Stage II *per se,* but rather is a requirement that OTR states achieve an amount of emissions reductions that corresponds to the amount that Stage II would achieve. Moreover, section 202(a)(6), in allowing for a waiver of the section 182(b)(3) Stage II requirement for nonattainment areas, does not refer to the independent section 184(b)(2) requirement. Thus, all areas in the OTR that are implementing Stage II controls under the requirements of both section 182(b)(3) and section 184(b)(2), or under section 184(b)(2) alone, would need to have adopted measures that achieve emissions reductions that are at least equivalent to those achievable by Stage II, incremental to ORVR, before the EPA could approve a SIP revision removing Stage II controls. The EPA intends to provide additional guidance for OTR states on how they can conduct updated comparability analyses based on the ''Stage II Comparability Study for the Northeast Ozone Transport Region,'' (EPA–452/R–94–011; January 1995) for purposes of removing Stage II under section 184(b)(2).

Before deciding to remove Stage II, state and local agencies should also consider any transportation conformity impacts related to removing Stage II if emissions reductions from Stage II are included in a SIP-approved on-road motor vehicle emissions budget. States may need to adjust conformity budgets or the components of the budget if removing Stage II requirements after the widespread use date would alter expected air quality benefits.

We request comment on all aspects of our treatment of the ORVR widespread use and section 182(b)(3) waiver issue, including any additional information that would assist the EPA in determining when ORVR widespread use will occur.

[15] ''Removal of Stage II Vapor Recovery in Situations where Widespread Use of Onboard Refueling Vapor Recovery is Demonstrated,'' from Stephen D. Page and Margo Tsirigotis Oge, EPA, December 12, 2006.

IV. Estimated Cost Savings

The EPA has conducted an initial assessment of the costs and savings to gasoline dispensing facility owners related to this proposed action. A report titled, ''Draft Regulatory Support Document, Decommissioning Stage II Vapor Recovery, Financial Benefits and Costs,'' is available in the public docket for this action. The report examines the initial costs and savings to facility owners incurred in the decommissioning of Stage II vapor recovery systems, as well as changes in recurring costs associated with above ground hardware maintenance, operations, and administrative tasks. The EPA estimates cost savings of about $3,277 per year for a typical gasoline dispensing facility, and an annual nationwide savings of $88 million if Stage II is phased out of the approximately 27,000 dispensing facilities outside of California that are required to have Stage II vapor recovery systems under section 182(b)(3) of the CAA. The EPA is also taking comment on this analysis and the implications to the Stage II waiver.

V. Statutory and Executive Order Reviews

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of legal mandates. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of these proposed regulations on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Rather, it provides criteria for reducing existing regulatory requirements on entities.

We continue to be interested in the potential impacts of these proposed regulations on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments, or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed action addresses the removal of a requirement regarding gasoline vapor recovery equipment, but does not impose any obligations to remove these programs.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action does not impose any new mandates on state or local governments. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comments on this proposed rule from state and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

The EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It does not impose additional costs on gasoline distribution, but rather promises to lower cost for gasoline vapor control by facilitating removal of redundant controls.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d), (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or

otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

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

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action proposes to waive the requirement for states to adopt Stage II programs, based on a determination of widespread use of ORVR. The EPA believes that by the date specified in the proposed rule, the amount of control that ORVR alone will achieve will be equivalent to the amount of control Stage II alone would achieve.

K. Determination Under Section 307(d)

Pursuant to sections 307(d)(1)(K) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.''

VI. Statutory Authority

The statutory authority for this action is provided by sections 182(b)(3) and 202(a)(6) of the CAA, as amended (42 U.S.C. 7511a(b)(3) and 42 U.S.C.7521(a)(6)). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Particulate matter, Volatile organic compounds.

Dated: July 8, 2011.

Lisa P. Jackson,

Administrator.

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

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

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart G—[Amended]

2. Section 51.126 is added to read as follows:

§ 51.126 Determination of widespread use of ORVR and waiver of CAA section 182(b)(3) Stage II gasoline vapor recovery requirements.

(a) Pursuant to section 202(a)(6) of the Clean Air Act, the Administrator has determined that, effective June 30, 2013, onboard refueling vapor recovery (ORVR) systems are in widespread use in the motor vehicle fleet within the United States.

(b) Effective June 30, 2013, the Administrator waives the requirement of Clean Air Act section 182(b)(3) for Stage II vapor recovery systems in ozone nonattainment areas regardless of classification. States must submit and receive the EPA approval of a revision to their State Implementation Plans before removing Stage II requirements that are contained therein.

(c) Notwithstanding paragraphs (a) and (b) of this section, States may submit to the EPA demonstrations that ORVR systems are in widespread use for areas within their borders as of a date earlier than June 30, 2013, and may request an earlier date for revision or waiver of the Clean Air Act section 182(b)(3) Stage II requirement based on such a demonstration. The Administrator may act on such requests by rule under Clean Air Act section 202(a)(6).

[FR Doc. 2011–17888 Filed 7–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0454; FRL–9439–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Determination of Attainment and Determination of Clean Data for the Annual 1997 Fine Particle Standard for the Charleston Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make two determinations regarding the Charleston, West Virginia fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter referred to as ''Charleston Area'' or ''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 Charleston Area has attained the 1997 annual $PM_{2.5}$ NAAQS and data available to date for 2010 in EPA's Air Quality System (AQS) database that show the area continues to attain. If EPA finalizes this proposed determination of attainment, the requirements for the Charleston Area to submit attainment demonstrations 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 August 15, 2011.

ADDRESSES: Submit your comments regarding the Charleston Area, identified by Docket ID No. EPA–R03–OAR–2011–0454, by one of the following methods:

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

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0454, Cristina Fernandez, Associate Director,

Office of Air Program Planning, Mail code 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2011–0454. 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 electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by e-mail at *khadr.asrah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What actions is EPA taking?
II. What is the background for these actions?
III. Has the Charleston Area attained the 1997 annual $PM_{2.5}$ standard?
A. Criteria
B. Charleston Area Air Quality
C. How did EPA address air quality in the Charleston Area?
D. Has the Charleston Area met the 1997 annual $PM_{2.5}$ air quality standard?
IV. What is the effect of these actions?
V. Statutory and Executive Order Reviews

I. What actions is EPA taking?

In accordance with section 179(c)(1) of the Clean Air Act (CAA), 42 United States Code section 7509(c)(1), and 40 Code of Federal Register (CFR) section 51.1004(c), EPA is proposing to determine that the Charleston Area (composed of Kanawha and Putnam Counties) has attained the 1997 annual $PM_{2.5}$ NAAQS. This proposed action is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 monitoring period that show that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS and data available to date for 2010 that show the Area continues to attain. 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 Charleston 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/m³) based on a 3-year average of annual mean $PM_{2.5}$ concentrations (hereafter referred to as ''the annual $PM_{2.5}$ NAAQS'' or ''the annual standard''). At that time, EPA also established a 24-hour standard of 65 μg/m³ (the ''1997 24-hour standard''). *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 Charleston Area was designated nonattainment for the annual 1997 $PM_{2.5}$ NAAQS during this designations process. *See* 40 CFR 81.349 (West Virginia).

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations and promulgated a 24-hour standard of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations (the ''2006 24-hour standard''). On November 13, 2009, EPA designated the Charleston Area as nonattainment for the 2006 24-hour standard (74 FR 58688). In that action, EPA also clarified the designations for the $PM_{2.5}$ NAAQS promulgated in 1997, stating that the Charleston Area was designated as nonattainment for the annual standard and attainment for the 1997 24-hour standard. Today's action, however, does not address either the 1997 or the 2006 24-hour standard.

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

On April 25, 2007 (72 FR 20664), 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 $PM_{2.5}$ standard. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the standard, as discussed below.

III. Has the Charleston Area attained the 1997 annual $PM_{2.5}$ standard?

A. Criteria

Today's rulemaking proposes to approve that the Charleston Area has attained the 1997 annual $PM_{2.5}$ NAAQS, based on the most recent three years of quality-assured data and that the Area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. Under EPA regulations at 40 CFR 50.7, the annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 μg/m³ at all relevant monitoring sites in the subject area.

B. Charleston Area Air Quality

EPA has determined that the $PM_{2.5}$ monitoring network for the Charleston Area is adequate. First, the number of

monitors in the Area meets the minimum regulatory requirements given in 40 CFR part 58 Appendix D. Second, the monitoring is in accordance with state monitoring plans that have been reviewed and approved by EPA.

Table 1 shows the design values (*i.e.,* the 3-year average of annual mean $PM_{2.5}$ concentrations) for the 1997 annual $PM_{2.5}$ NAAQS for the Charleston Area monitors for the years 2007–2009. All data considered have been quality-assured, certified, and recorded in AQS. The highest 3-year average annual concentration for 2007–2009 on this table was recorded in Kanawha County, West Virginia at the South Charleston site 54–039–1005, recording a 3-year average annual concentration of 14.4 μg/m³.

EPA's review of these data indicates that the Charleston Area has met the 1997 annual $PM_{2.5}$ NAAQS. Table 1 and the related discussion below show that based on EPA's analysis of data for 2007–2009, the Area attained the 1997 annual $PM_{2.5}$ standard by its attainment date of April 5, 2010. In addition, Table 2 and the related discussion below, show that the Area continues to attain the standard based on data available to date for 2010.

TABLE 1—2007–2009 ANNUAL AVERAGE CONCENTRATIONS IN THE CHARLESTON AREA

Site name	County	Site No.	Design value (μg/m³)
Charleston	Kanawha	54–039–0010	13.1
South Charleston	Kanawha	54–039–1005	14.4

C. How did EPA address the air quality in Charleston?

There are two monitors located in Kanawha County. There is a monitor located in Charleston and a monitor located in South Charleston. There was a Guthrie site monitor also located in Kanawha County that was shut down in 2007 because a carbon monitor for the $PM_{2.5}$ chemical speciation network replaced it at its respective location. EPA data completeness requirements require at least 75 percent of the scheduled sampling days for each quarter have valid data. See 40 CFR part 50, Appendix N section 4.1(b). The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data (40 CFR part 50, Appendix N, section 4.1(c)).

Determinations of attainment are based on three years of complete, quality-assured data. Nevertheless, any such assessment should consider additional quality-assured data, to the extent that quality-assured data exist. In accordance with Appendix N and standard EPA practice, this review of data is based on the three most recent years of complete data, generally 2007–2009. Quality-assured data are now available for 2010, which EPA used to compute preliminary design values. The Charleston site has a preliminary 2008–2010 design value of 11.8 μg/m³ and the South Charleston site has a preliminary 2008–2010 design value of 13.2 μg/m³. On the basis of this review, EPA is proposing to determine that the Charleston Area has attained the 1997 annual $PM_{2.5}$ NAAQS and is soliciting public comments on its proposed determination.

TABLE 2—2008–2010 ANNUAL AVERAGE CONCENTRATIONS IN THE CHARLESTON AREA

Site name	County	Site No.	Preliminary design value (μg/m³)
Charleston	Kanawha	54–039–0010	11.8
South Charleston	Kanawha	54–039–1005	13.2

D. Has the Charleston 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 Charleston Area from 2007 through the present time.

On the basis of this review, EPA proposes to determine that the Charleston Area has attained and continues to attain the 1997 annual $PM_{2.5}$ NAAQS based on the quality-assured data for the 2007–2009 period and preliminary data for the 2008–2010 monitoring period. 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 Charleston 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 EPA's proposed determination of attainment, based on the most recent three years of quality-assured data is made final, the requirements for the Charleston Area to submit attainment demonstrations 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 Charleston Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c). Notably, as described below, any such determination would not be equivalent to the redesignation of the Charleston Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS.

If this proposed determination of attainment is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the Area has violated the 1997 annual $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Charleston 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 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the 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 Charleston 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 Charleston Area.

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 Charleston Area's attainment 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 determinations 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 Charleston 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, Reporting and record-keeping requirements.

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

Dated: June 27, 2011.

W. C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–17868 Filed 7–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0288; FRL–9440–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Control of Particulate Matter Emissions From the Operation of Outdoor Wood-Fired Boilers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the control of particular matter emissions from the operation of outdoor wood-fired boilers. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 15, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0288 by one of the following methods

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

B. *E-mail:* fernandez.cristina@epa.gov

C. *Mail:* EPA–R03–OAR–2011–0288, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2011–0288. 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 electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: On October 20, 2010, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to its SIP for the control of particular matter (PM) emissions from the operation of outdoor wood-fired boilers (OWBs).

I. Background

On July 18, 1997 (62 FR 38652), EPA amended the National Ambient Air Quality Standard (NAAQS) for PM to add a new standard for fine particles, using fine particulates equal to or less than 2.5 micrometers in diameter ($PM_{2.5}$) as the indicator. EPA set the health-based (primary) and welfare-based (secondary) $PM_{2.5}$ annual standard at a level of 15 micrograms per cubic meter (μg/m^3) and the 24-hour standard at a level of 65 μg/m^3. The health-based primary standard is designed to protect human health from elevated levels of $PM_{2.5}$, which have been linked to premature mortality and other health effects. The secondary standard is designed to protect against major environmental effects of $PM_{2.5}$ such as visibility impairments, soiling, and materials damage. On October 17, 2006 (71 FR 61236), EPA revised the primary and secondary 24-hour NAAQS for $PM_{2.5}$ to 35 μg/m^3 from 65 μg/m^3.

A significant and growing source of $PM_{2.5}$ emissions in the Commonwealth of Pennsylvania is from OWBs. OWBs, also referred to as outdoor wood-fired furnaces, outdoor wood-burning appliances, or outdoor hydronic heaters, are free-standing fuel burning devices designed: (1) To burn clean wood or other approved solid fuels; (2) specifically for outdoor installation or installation in structures not normally intended for habitation by humans or domestic animals, such as garages; and (3) to heat building space or water by means of distribution, typically through pipes, of a fluid heated in the device, typically water or a water and antifreeze mixture. They resemble a small shed or mini-barn with a short smokestack on top. OWBs are being sold to heat homes and buildings; produce domestic hot water; heat swimming pools or hot tubs; and provide heat to agricultural operations such as greenhouses and dairies.

A concern associated with certain OWBs is the air pollution they may produce. Smoldering fires and short smokestacks may create heavy smoke to the ground that sometimes causes a neighborhood nuisance or an adverse impact on public health and the environment. Smoke from OWBs which forms from incomplete combustion, contains emissions from fine particle pollution, carbon monoxide, and other organic products, such as formaldehyde, benzene and aromatic hydrocarbons, all of which can cause cancer. When inhaled, fine particles from smoke emissions are carried deep into the lungs and can impair lung function and aggrevate existing medical conditions such as asthma, lung, or heart disease. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with lung and heart disease, and children.

Unlike indoor wood stoves that are regulated by EPA, OWBs are not required to meet a Federal emission standard, and the majority of them are not equipped with pollution controls. EPA initiated a voluntary program that encourages manufacturers of OWBs to improve air quality through developing and distributing cleaner-burning, more efficient OWBs. Through this voluntary effort, OWBs are certified and labeled to meet EPA emissions performance levels in two phases. Phase 1 of the program was in place from January 2007 through October 15, 2008. To qualify for Phase 1, manufacturers were required to develop an OWB model that was 70 percent cleaner-burning than unqualified models by meeting the EPA air emission standard of 0.6 pound PM per million British thermal unit (Btu) heat input as tested by an independent accredited laboratory. Phase 1 OWB models are labeled with an orange tag. Phase 1 Partnership Agreements ended when Phase 2 Partnership Agreements were initiated on October 16, 2008. To qualify for Phase 2, manufacturers must develop an OWB model that is 90 percent cleaner-burning than the Phase 1 OWBs and meet the EPA air emissions standard of 0.32 pound PM per million Btu heat output. The Phase 2 OWB models, just like the Phase 1 OWB models are also tested by an independent accredited laboratory. Phase 2 OWB models are labeled with a white tag. Additional information about the EPA voluntary OWB program is available on EPA's Web site at *http://www.epa.gov/burnwise*. Furthermore, the Northeast States for Coordinated Air Use Management (NESCAUM), which is a regional air pollution control organization, comprised of the air program directors of all the New England states, New York and New Jersey, in coordination with a number of states and EPA, developed a model rule for regulating OWBs (also known as outdoor hydronic heaters (OHHs)). The model rule was released in January 2007 and is available at *http://www.nescaum.org/topics/outdoor-hydronic-heaters*. The purpose of the model rule is to assist state and local agencies in adopting requirements that will reduce air pollution from OWBs. The model rule establishes emission limits and labeling requirements for new OWBs and contains the following components for both new and existing OWBs: setback requirements from property lines, structures, and homes; stack height requirements; and distributor and buyer notification requirements.

II. Summary of SIP Revision

The SIP revision adds definitions and terms to Title 25 of the Pennsylvania Code (25 Pa. Code) Chapter 121.1, relating to definitions, used in the substantive provision of this SIP revision. In addition, the SIP revision adds a new regulation to 25 Pa. Code Chapter 123 (Standards for Contaminants) Particulate Matter Emissions, Section 123.14 (Outdoor Wood-Fired Boilers). The emission standard established in this SIP revision is the Phase 2 emission standard described in the EPA voluntary OWB program. The SIP revision is also based on the NESCAUM model rule.

The new regulation (Section 123.14) applies to the following: (1) To a person, manufacturer, supplier or distributor who sells, offers for sale, leases or distributes an outdoor wood-fired boiler for use; (2) a person who installs an outdoor wood-fired boiler; and (3) a person who purchases, receives, leases, owns, uses or operate an outdoor wood-fired boiler. The new regulation consists of the following: (1) Exemptions for a non-Phase 2 OWB; (2) Phase 2 OWB provisions; (3) setback requirements for new Phase 2 OWBs; (4) stack height requirements for new Phase 2 OWBs; (5) allowed fuels; (6) prohibited fuels; and (7) applicable laws and regulatory requirements. A detailed summary of EPA's review of and rationale for

proposing to approve this SIP revision may be found in the Technical Support Document (TSD) for this action which is available online at *http://www.regulations.gov*, Docket number EPA–R03–OAR–2011–0288.

III. Proposed Action

EPA is proposing to approve the Pennsylvania SIP revision that amends 25 Pa. Code Chapter 121.1 by adding new definitions, and adding a new regulation, 25 Pa. Code Chapter 123, Section 123.14, pertaining to the control of PM emissions from the operation of OWBs. This SIP revision was submitted on October 20, 2010. The emission standard established in this SIP revision is the Phase 2 emission standard described in the EPA voluntary program. This SIP revision is also based on the NESCAUM model rule that assisted PADEP in adopting requirements that will reduce air pollution from OWBs. This SIP revision reduces the problems associated with the operation of OWBs, including smoke, odors and burning prohibited fuels, including garbage, tires, and hazardous waste. Reductions in ambient levels of $PM_{2.5}$ would promote improved human and animal health and welfare, improved visibility, decreased soiling and materials damage, and decrease damage to plants and trees. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, this proposed rule, pertaining to Pennsylvania's control of PM emissions from the operation of outdoor wood-fired boilers, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: June 28, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–17866 Filed 7–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0537; FRL–9432–1]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from consumer paint thinner & multi-purpose solvents and metalworking fluids & direct-contact lubricants. 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).

DATES: Any comments on this proposal must arrive by *August 15, 2011.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0355, by one of the following methods:

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

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

Docket: Generally, documents in the docket for this action are 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, large maps), 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: This proposal addresses the following local rules: SCAQMD Rule 1143, ''Consumer Paint Thinner & Multi-Purpose Solvents'' and SCAQMD Rule 1144, ''Metal Working Fluids & Direct-Contact Lubricants,'' In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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

Dated: June 23, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–17758 Filed 7–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0546; FRL–9438–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from the manufacture of polystyrene, polyethylene, and polypropylene products. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by August 15, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0546, 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: Generally, documents in the docket for this action are 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, large maps), 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: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.*

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

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III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rule did the State submit?

We are proposing a limited approval and limited disapproval of San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4682, Polystyrene, Polyethylene, and Polypropylene Products Manufacturing, amended on September 20, 2007, and submitted by the California Air Resources Board (CARB) on March 7, 2008. On April 17, 2008, the submittal for SJVUAPCD Rule 4682 was 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 this rule?

We approved an earlier version of Rule 4682 into the SIP on June 13, 1995 (60 FR 31086).

C. What is the purpose of the submitted rule?

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. Rule 4682 was designed to reduce emissions of VOCs from the manufacturing, processing, and storage of products composed of polystyrene, polyethylene, or polypropylene. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see CAA section 110(a)), and must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines document as well as each major source in

nonattainment areas (see CAA sections 182(a)(2) and (b)(2)). The SJVUAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 4682 must fulfill RACT.

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

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

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

3. ''Control of VOC Emissions from Polystyrene Foam Manufacturing'' (EPA–450/3–90–020, September 1990).

4. ''Averaging Times for Compliance With VOC Emission Limits—SIP Revision Policy,'' memorandum from John R. O'Connor, OAQPS, dated January 20, 1984.

Additionally, SIP revisions must not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA (see CAA section 110(l)) or modify, in a nonattainment area, any SIP-approved control requirement in effect before November 15, 1990 (see CAA section 193).

B. Does the rule meet the evaluation criteria?

Rule 4682 improves the SIP by clarifying language, adding definitions, and adding control requirements. This rule also improves the SIP by adding requirements for compliance plans, recordkeeping, and testing. The rule is generally clear and contains appropriate monitoring, reporting, and recordkeeping requirements to ensure the emission limits are adequately enforceable. The rule is largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. We are proposing to determine that our approval of the submittal would comply with CAA section 110(l), because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for RFP and attainment of the National Ambient Air Quality Standards are met, and the submitted SIP revision is at least as stringent as the rule previously approved into the SIP. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the rule deficiencies?

Rule 4682 contains a monthly averaging provision that conflicts with CAA section 110 and part D, and prevents full approval of the SIP revision. Section 5.3.1 of Rule 4682 establishes an emission limit of 2.4 pounds of VOC per 100 pounds of total material processed, as averaged on a monthly basis. EPA generally cannot approve compliance periods exceeding 24 hours unless specific criteria are met, including a clear explanation of why the application of RACT is not economically or technically feasible on a daily basis. Rules for this source category in other districts contain similar limits without the monthly averaging. A more detailed discussion of this deficiency is contained in the TSD.

D. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under CAA section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under CAA section 179 unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the disapproval. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the 2-year clock for the federal implementation plan requirement under section 110(c). Note that the submitted rule has been adopted by the SJVUAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992, EPA memo found at: *http://www.epa.gov/nsr/ttnnsr01/gen/pdf/memo-s.pdf*.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

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

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

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome

alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

E. Executive Order 13132, Federalism

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

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

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

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

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

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

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

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

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 29, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–17784 Filed 7–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2010–0672; FRL–9439–3]

RIN 2060–AQ39

Protection of Stratospheric Ozone: Extension of Global Laboratory and Analytical Use Exemption for Essential Class I Ozone-Depleting Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to extend the global laboratory and analytical use exemption for the production and import of Class I ozone-depleting substances through December 31, 2014, consistent with the recent actions by the

Parties to the *Montreal Protocol on Substances that Deplete the Ozone Layer.* The exemption allows persons in the United States to produce and import controlled substances for laboratory and analytical uses that have not been already identified by EPA as nonessential. EPA is also seeking comment on adding to the list of procedures that are excluded from the exemption uses that are noted in Decision XXI/6 (from the 21st Meeting of the Parties [MOP] to the Montreal Protocol). EPA is not proposing to add these procedures at this time.

DATES: Written comments on this proposed rule must be received by the EPA Docket on or before September 13, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0672, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Docket EPA–HQ–OAR–2010–0672, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Docket EPA–HQ–OAR–2010–0672, Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0672. 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 *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Ifeyinwa Davis by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by courier service or overnight express: 1301 L Street, NW., Workstation 1027N, Washington, DC 20005; by telephone: 202–343–9234; or by e-mail: *davis.ifeyinwa@epa.gov.* You may also visit the EPA's Ozone Protection Web site at *http://www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other related topics.

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I. General Information

A. What should I consider when preparing my comments?

1. *Confidential Business Information.* Do not submit confidential business information (CBI) to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Extension of the Global Laboratory and Analytical Use Exemption

The *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) is the international agreement to reduce and eventually eliminate the production and consumption[1] of ozone-

[1] ''Consumption'' is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported from the United States to other Parties to the Montreal Protocol (*see* Section 601(6) of the Clean Air Act).

depleting substances (ODS). The elimination of production and consumption of ODSs is accomplished through adherence to phaseout schedules for specific controlled substances. Section 604 of the Clean Air Act requires EPA to promulgate regulations phasing out production and consumption of Class I ODS according to a prescribed schedule. EPA has accelerated this phaseout schedule pursuant to Section 606 of the Clean Air Act, which requires the Agency to promulgate an accelerated phaseout schedule in response to Montreal Protocol modifications that accelerate the international phaseout. EPA's phaseout regulations for ODS are codified at 40 CFR part 82, subpart A. As of January 1, 1996, production and import of most Class I controlled substances—including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform[2]—were phased out in developed countries, including the United States.

However, the Montreal Protocol provides exemptions that allow for the continued import and/or production of ODSs for specific uses. Under the Montreal Protocol, for most Class I ODSs, the Parties may collectively grant exemptions to the ban on production and import of ODS for uses that they determine to be ''essential.'' For example, with respect to CFCs, Article 2A(4) provides that the phaseout will apply ''save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be essential.'' Similar language appears in the control provisions for halons (Art. 2B), carbon tetrachloride (Art. 2D), methyl chloroform (Art. 2E), hydrobromofluorocarbons (Art. 2G), and chlorobromomethane (Art. 2I). As defined by Decision IV/25 of the Parties, use of a controlled substance is essential only if (1) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects), and (2) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health.

Decision X/19 (taken in 1998) allowed a general exemption for essential laboratory and analytical uses through December 31, 2005. EPA codified this exemption at 40 CFR part 82, subpart A. While the Clean Air Act does not specifically provide for this exemption, EPA determined that an exemption for essential laboratory and analytical uses was allowable under the Act as a *de minimis* exemption. EPA addressed the *de minimis* exemption in the final rule of March 13, 2001 (66 FR 14760).

Decision X/19 also requested the Montreal Protocol's Technology and Economic Assessment Panel (TEAP), a group of technical experts from various Parties, to report annually to the Parties to the Montreal Protocol on laboratory and analytical procedures that could be performed without the use of controlled substances. It further stated that at future Meetings of the Parties (MOPs), the Parties would decide whether such procedures should no longer be eligible for exemptions. Based on the TEAP's recommendation, the Parties to the Montreal Protocol decided in 1999 (Decision XI/15) that the general exemption no longer applied to the following uses: testing of oil and grease and total petroleum hydrocarbons in water; testing of tar in road-paving materials; and forensic finger-printing. EPA incorporated this exclusion at Appendix G to subpart A of 40 CFR part 82 on February 11, 2002 (67 FR 6352).

At the 18th MOP, the Parties acknowledged the need for methyl bromide for laboratory and analytical procedures, and added methyl bromide to the approved ODSs under the essential laboratory and analytical use exemption. Decision XVIII/15 outlined specific uses and exclusions for methyl bromide under the exemption. EPA incorporated specific uses of methyl bromide in the essential laboratory and analytical use exemption at Appendix G to subpart A of 40 CFR part 82 on December 27, 2007 (72 FR 73264).

In November 2009, at the 21st MOP, the Parties in Decision XXI/6 extended the global laboratory and analytical use exemption through December 31, 2014. Decision XXI/6 lists laboratory and analytical uses of ODSs for which the TEAP and its Chemicals Technical Options Committee (CTOC), determined that alternative procedures exist. However, the Parties did not exclude any additional procedures from the exemption for laboratory and analytical uses. The Parties asked the TEAP and the CTOC to continue to consider possible alternatives and report back to the Parties.

EPA's regulations regarding this exemption at 40 CFR 82.8(b) currently state, ''A global exemption for Class I controlled substances for essential laboratory and analytical uses shall be in effect through December 31, 2011, subject to the restrictions in appendix G of this subpart, and subject to the recordkeeping and reporting requirements at § 82.13(u) through (x). There is no amount specified for this exemption.'' Because certain laboratory procedures continue to require the use of Class I substances in the United States, because non-ODS replacements for the Class I substances have not been identified for all uses, and because the Parties, via Decision XXI/6, extended this exemption through December 31, 2014, EPA is proposing to revise 40 CFR 82.8(b) to reflect the extension of the exemption to December 31, 2014. For a more detailed discussion of the reasons for the exemption, refer to the March 13, 2001, final rule (66 FR 14760). As discussed in the March 2001 rule, the controls in place for laboratory and analytical uses provide adequate assurance that very little, if any, environmental damage will result from the handling and disposal of the small amounts of Class I ODS used in such applications.

EPA is seeking comment on adding to the list of procedures that are excluded from the exemption under 40 CFR part 82, appendix G. EPA is not proposing to add these procedures at this time. The following uses are noted in Decision XXI/6 as being laboratory and analytical procedures for which the TEAP and its CTOC have concluded that alternatives exist.

(a) Analyses in which the ODS is used as a solvent for spectroscopic measurements:
  (i) of hydrocarbons (oil and grease) in water or soil
  (ii) of simethicone (polydimethylsiloxane)
  (iii) when recording infrared and nuclear magnetic resonance (NMR) spectra, including hydroxyl index
(b) Analyses in which the ODS is used as a solvent for electrochemical methods of analysis of:
  (i) cyanocobalamin
  (ii) bromine index
(c) Analyses involving selective solubility in the ODS of:
  (i) cascarosides
  (ii) thyroid extracts
  (iii) polymers
(d) Analyses in which the ODS is used to preconcentrate the analyte, for:
  (i) liquid chromatography (HPLC) of drugs and pesticides
  (ii) gas chromatography of organic chemicals such as steroids
  (iii) adsorption chromatography of organic chemicals
(e) Titration of iodine with thiosulfate (iodometric analyses) for determination of:
  (i) iodine
  (ii) copper
  (iii) arsenic
  (iv) sulphur
(f) Iodine and bromine index measurements (titrations)
(g) Miscellaneous analyses, namely
  (i) stiffness of leather
  (ii) jellification point
  (iii) specific weight of cement

[2] Class I controlled substances are listed at 40 CFR part 82, subpart A, Appendix A.

(iv) gas mask cartridge breakthrough
(h) Use of ODS as a solvent in organic chemical reactions
(i) O- and N-difluoromethylation
(i) General use as laboratory solvent, namely
(i) washing of NMR tubes
(ii) removal of greases from glassware

EPA is seeking comment on whether alternative procedures exist in the United States for each of these laboratory applications. EPA notes that unlike the procedures already listed in Appendix G to 40 CFR part 82, the list developed by the TEAP and its CTOC has not been adopted by the Parties to the Montreal Protocol. Commenters should be aware that if EPA were to add these procedures to the list of procedures that are excluded from the exemption in Appendix G, then no further production or import of ODS for these laboratory procedures would be permitted. In the supply chain, ODS distributors would not be able to obtain quantities for those purposes.

EPA is seeking comments on today's proposal and the alternative approach described above, noting that the path forward for the general exemption for laboratory and analytical procedures under the Montreal Protocol is not clear. The Parties to the Montreal Protocol could decide between now and December 31, 2014, to exclude additional procedures from the general exemption; to replace the general exemption with a list of specifically approved procedures; or not to extend the exemption beyond December 31, 2014.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Order 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action extends the existing global laboratory and analytical use exemption allowing the production and import of Class I ozone-depleting substances until December 31, 2014. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR 82.8(a) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0170. The OMB control numbers for EPA's regulations in 40 CFR part 82 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

For purposes of assessing the impact of today's proposed rule on small entities, small entity is defined as: (1) Pharmaceutical preparations manufacturing businesses (NAICS code 325412) that have fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant its field.

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

This action, once finalized, will provide an otherwise unavailable benefit to those companies that obtain ozone-depleting substances under the essential laboratory and analytical use exemption. We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impact of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. This action merely extends the essential laboratory and analytical use exemption from the 1996 and 2005 phaseouts of Class I ODS until December 31, 2014. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely extends the essential laboratory and analytical use exemption from the 1996 and 2005 phaseouts of Class I ODS until December 31, 2014. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose any enforceable duties on communities of Indian tribal governments. This action merely extends the essential laboratory and analytical use exemption from the 1996 and 2005 phaseouts of Class I ODS until December 31, 2014. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this proposed rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it will not affect the level of protection provided to human health or the environment. The controls in place for laboratory and analytical uses provide adequate assurance that very little, if any, environmental impact will result from the handling and disposal of the small amounts of Class I ODS used in such applications.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Imports, Methyl Chloroform, Ozone, Reporting and recordkeeping requirements.

Dated: July 8, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.8 is amended by revising paragraph (b) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(b) A global exemption for Class I controlled substances for essential laboratory and analytical uses shall be in effect through December 31, 2014, subject to the restrictions in appendix G of this subpart, and subject to the recordkeeping and reporting requirements at § 82.13(u) through (x). There is no amount specified for this exemption.

* * * * *

[FR Doc. 2011–17905 Filed 7–14–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–R04–SFUND–2011–0573; FRL–9438–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Hipps Road Landfill Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is issuing a Notice of Intent To Delete the Hipps Road Landfill Superfund Site (Site) located in Jacksonville, Florida, 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 Florida, through the Florida Department of Environmental Protection, 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 *August 15, 2011.*

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–R04–SFUND–2011–0573, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail: miller.scott@epa.gov.*
- *Fax:* 404–562–8896.
- *Mail:* Scott Miller, Remedial Project Manager, Superfund Remedial Branch, Section C, Superfund Division, U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303.
- *Hand delivery:* Same address as above. 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–R04–SFUND–2011–0573. 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 statue. 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 Record Center, 61 Forsyth Street, SW., Atlanta, GA 30303.

Hours: 8 a.m. to 4 p.m., Monday through Friday.

Jacksonville Public Library, 6886 103rd Street, Jacksonville, FL 32210.

Monday–Thursday: 10 a.m.–9 p.m., Friday & Saturday: 10 a.m.–6 p.m.

Sunday: 1 p.m.–6 p.m.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303, (404) 562–9120, *e-mail: miller.scott@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 Hipps Road Landfill Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate 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: June 27, 2011.

S. Stanley Meiburg,

Acting Regional Administrator, EPA Region 4 .

[FR Doc. 2011–17753 Filed 7–14–11; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 76, No. 136
Friday, July 15, 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

Submission for OMB Review; Comment Request

July 12, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of publication of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

National Agricultural Statistics Service

Title: Distillers Co-Products Survey.

OMB Control Number: 0535–0247.

Summary of Collection: The National Agricultural Statistics Service (NASS) primary function is to prepare and issue official State and national estimates of crop and livestock production, disposition and prices. The goal of this NASS project is to conduct a large scale survey to measure livestock producers' use of distillers' grains and other crops, which are nutritional by-products of distilling processes, such as ethyl alcohol (ethanol) or biodiesel production. The Energy Independence and Security Act (EISA) of 2007 established targets for the production of biofuel in the United States. The renewable Fuel Standard (RFS) passed as a part of the EISA, sets target levels for fuels produced from specific feedstock categories. These distillers' by-products contain valuable protein, fiber, vitamins, and minerals and can be utilized as quality livestock feed.

Need and Use of the Information: Distillers co-products were traditionally sold to livestock operations in the vicinity of ethanol plants. Recent improvements in the milling and drying process have allowed a large portion of the co-products to be marketed in many new regions of the U.S. The survey will contact livestock and poultry operations to determine the extent of feeding of distiller's by-products, and aspects on which producers base their decisions regarding livestock and poultry feed, such as nutrient values, product consistency, product form, product testing, inclusion rates, economics, shelf life, storage, and transportation. The probability-based survey will include beef (cow/calf and feedlot), dairy, swine, and poultry species with targeted size-of-operation criteria. The survey will be conducted in all States except Alaska and Hawaii.

Description of Respondents: Farmers and Ranchers.

Number of Respondents: 59,000.

Frequency of Responses: Reporting: One-time.

Total Burden Hours: 23,386.

Charlene Parker,
Departmental Information Collection Clearance Officer.

[FR Doc. 2011–17884 Filed 7–14–11; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra National Forest, Bass Lake Ranger District, California, Grey's Mountain Ecosystem Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement.

SUMMARY: The Bass Lake Ranger District is proposing a series of ecological restoration treatments, north of the community of Bass Lake, California, south of Soquel Meadow, east of Nelder Grove Historical Area and west of Graham Mountain. Treatment areas have been initially identified to provide a ''strategic'' means to modify intensity and spread of wildland fires across the landscape and near communities. This is commonly known as the ''SPLAT'' (Strategically Placed Area Treatment) strategy. Additional treatments within these SPLATs have been identified where stands are densely stocked and thinning is needed to reduce inter-tree competition and improve tree vigor to increase stand resiliency to large scale mortality from insects and disease. In addition to the SPLATS, other areas will be treated for the specific purpose of creating defensible fuel profiles near key transportation corridors and within the defense zones of the Wildland Urban Interface (WUI). Restoration treatments are also planned for degraded aquatic features such as meadows, wildlife structures/habitat improvement, noxious weed eradication and monitoring, and tracks created by motorized vehicles and forest road improvements. Additional aspects of the project include monitoring for designated Off Highway Vehicles (OHV) trails to ensure consistency with forest service best management standards, cultural resource improvements and range management improvements.

DATES: Comments concerning the scope of this analysis should be received no later than 30 days after the publication

of this notice in the **Federal Register**. The draft environmental impact statement (DEIS) is expected in December 2011 and the final environmental impact statement (FEIS) is expected in March 2012.

ADDRESSES: Send written comments to the U.S. Forest Service, Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA 93643, *Attn:* David Martin. Comments may also be sent via e-mail to *comments-pacificsouthwest-sierra@fs.fed.us* (use Rich Text format (.rtf) or Word format (.doc)) or via facsimile to (559) 877–3308. It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for the proposed action. However comments submitted anonymously will be accepted and considered.

FOR FURTHER INFORMATION CONTACT: Burt Stalter, Interdisciplinary Team Leader, at Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA 93643. Individuals who use telecommunication devices for the death (TDD) may call the Federal Information Relay Services (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background Information: The Grey's Mountain Ecosystem Restoration Project (Madera County, California) lies within the Willow Creek and the Fresno River watershed, where during the period before significant Euro-American influence, natural fires occurred frequently and were of low intensity with return intervals ranging from every 5 to 10 years. During the past century, management activities (including harvesting operations, fire exclusion/suppression, *etc.*) and increased human habitation, have changed the composition of vegetation. Currently, vegetation within the Grey's Mountain Ecosystem Restoration Project has changed from one where frequent, low intensity fires occurred to one with increased susceptibility to infrequent moderate to high intensity wildland fire. Forest stand densities are above that which can be sustained, with inter-tree competition increasing and tree vigor beginning to decline. Pockets of insect and disease attack are beginning to show in the stands as well as the drought induced mortality. Non-native plant species and noxious weeds, that were absent in the area, now are growing in small pockets.

The Grey's Mountain Ecological Restoration Project lies within the elevational bands for the Southern Sierra Fisher Conservation Area. Public concern and management review surrounding the significance of potential impacts to the Pacific fisher, a candidate species and the California spotted owl, a sensitive species, during past projects, has led to the decision to document the environmental analysis with an environmental impact statement (EIS) for this project.

Purpose and Need for Action

Vegetation treatments are needed to reduce density of trees and shrubs and increase stand health and vigor. Stand densities within the lower and mid-canopy layers of conifer stands need to be reduced to a level which provides for increased tree growth and vigor resulting in increased stand resiliency enabling stands to better withstand fluctuations in temperature and precipitation, attacks from insects and diseases, and the effects of wildfires by creating sustainable stand densities.

Additionally there is a need to reduce the intensity and spread of wildfires across the landscape and near communities. Treatments would provide a buffer between developed areas and wildlands where fire suppression capabilities are enhanced by modified fire behavior inside the WUI zones as well as provide a safe and effective area for fire suppression activities to occur.

There is a need for fuel reduction (in the surface and ladder fuels) that protects human communities from moderate/high intensity wild fires as well as minimizes the spread of wildfires that might originate in urban areas into the forested lands.

Proposed Action

The Grey's Mountain Ecological Restoration Project proposes to:

- Treat surface and ladder fuels (live and dead) to interrupt wildland fire spread and fire intensity levels. This is proposed to be completed utilizing thinning of pre-commercial and commercial conifers, mastication and/or dozer piling and burning in order to improve the ability of firefighters to suppress and control wildland fires and provide a better measure of safety for the public and personnel.
- Conduct density management treatments by commercially thinning from below pine, mixed conifer and fir stands and, where needed, precommercial thinning the remainder. Precommercial thin young conifer plantations and conifer reproduction. This is being accomplished to improve the vigor of the stands.
- Masticate trees and brush/shrub patches to tie treatment areas together in strategic locations.
- Utilize prescribe fire where needed as a tool to reduce natural and activity generated fuels through pile burning, jackpot, under story and/or broadcast burning. Prescribed burning treatments will occur as the initial treatment in one area within the project boundary, to connect treatments together across steep broken terrain that cannot be treated with other methods.
- Prepare and plant conifers within specific sites of failed conifer plantations and promoting natural stand characteristics within established plantations by creating openings around black oaks and promoting understory diversity.
- Utilize prescribe fire and/or manual methods to treat infestations of noxious weeds, with the goal of eradication and preventing its spread into areas treated. Post treatment monitoring will be done to ensure any new populations are dealt with promptly.
- Improve and restore native plant communities that are important to local Native American tribes for traditional uses. Historically significant plants will be managed by prescribed fire and, if needed, by hand tools.
- Reduce fuel loading in selected cultural resource sites vulnerable to catastrophic wildfire to aid in their future protection and preservation.
- Improve and restore degraded aquatic features such as meadows by reducing encroaching conifers and stabilizing areas of accelerated erosion to mitigate sedimentation to streams and improve water quality and quantity for downstream beneficial use.
- Improve wildlife habitat by restoring key components such as large dbh snags, adequate quantities of coarse woody debris, and by promoting health and vigor of oaks and encouraging growth of larger dbh trees. These are essential habitat components in the Sierra Nevada that are used by a wide variety of vertebrates and invertebrates for shelter, hiding cover, denning, nesting, resting areas and food sources. Methods used to restore these habitat components may include precise scattered snag creation by girdling or topping trees or using prescribed fire to create pockets of contiguous snags. Plot sampling throughout the treatment units will gather information on current levels of coarse woody debris (CWD). Levels of

CWD will be increased in those areas where they are shown to be in deficit for wildlife habitat use. Potential methods to achieve this desired level of CWD includes falling and leaving trees >16″dbh, and recruitment of CWD through prescribed burning activities that will create some snags which will eventually contribute to CWD levels. Growth and vigor of oaks will be promoted where needed by clearing overtopping conifers.

• Identify and monitor OHV trails for restoration or reclamation needs and use approved methods to complete these activities. Possible restoration activities could be maintenance and improvements to approved trails signage on non approved trails, and obliteration and reclamation of these trails.

• Identify forest roads that could be causing resource damage and use approved methods for construction and maintenance of these areas. The possible activities could be replacing plugged or non functioning culverts or grading of road surfaces to keep offsite soil movement to a minimum. Replacing damaged or missing road signs.

• Identify and improve resources for range management. Activities could include maintenance of stock drives, drift fence's and cattle guard's.

Grey's Mountain Ecological Restoration Project encompasses 9,600 acres. Of which the following acres would be analyzed for treatments; 2,770 acres of Tractor, 220 acres of prescribed burning, 318 acres of mastication, 100 acres of hand work, and 110 acres of meadow restoration.

Possible Alternatives

To comply with NEPA, the Forest Service will evaluate additional alternatives to the proposed action developed based on public comments. A no action alternative to provide a baseline for comparison to the action alternatives will be included within the EIS. Each alternative will be explored and evaluated, or rationale will be given for eliminating an alternative from detailed study.

Responsible Official

The Responsible Deciding Official is Scott G. Armentrout, Forest Supervisor, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93612.

Nature of Decision To Be Made

The Forest Supervisor will decide whether to implement the proposed action, take an alternative action that meets the purpose and need or take no action.

Scoping Process

The notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The project is included in the Sierra National Forest's quarterly scheduled of proposed actions (SOPA). Information on the proposed action will also be posted on the Sierra National Forests Web site, *http://fs.fed.us/r5/sierra/projects,* and will also be advertised in both the Fresno Bee and the Oakhurst Sierra Star. This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

Comments submitted during this scoping period should be in writing and should be specific to the proposed action. The comments should describe as clearly and completely as possible any issues the commenter has with the proposal. It is important reviewers provide their comments at such times in such a manner that they are useful to the agency's preparation on the environmental impact statement.

Dated: July 8, 2011.

Scott G. Armentrout,

Forest Supervisor, Sierra National Forest.

[FR Doc. 2011–17707 Filed 7–14–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Arizona Counties Resource Advisory; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Arizona Counties Resource Advisory Committee will meet in Springerville, Arizona. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend funding of project proposals.

DATES: The meeting will be held August 8, 2011 beginning at 10:30 a.m. until 5:00 p.m., and continue on August 9, 2011 beginning at 8:30 a.m. until approximately 4:00 p.m. This meeting was originally scheduled to be held on June 8 and June 9, 2011, but had to be postponed because of mandatory evacuations and health and safety concerns associated with the Wallow Wildfire.

ADDRESSES: The meeting will be held at the Apache-Sitgreaves National Forests Supervisor's Office conference room, located at 30 South Chiricahua Drive. Written comments may be submitted as described under Supplementary Information.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Apache-Sitgreaves National Forests Supervisor's Office, located at 30 South Chiricahua Drive. Please call ahead to 928–333–6280 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Julia Faith Rivera, RAC Program Manager, Eastern Arizona Counties Resource Advisory Committee, Apache-Sitgreaves National Forests, telephone 928–333–6280, or *jfrivera@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: The Resource Advisory Committee will review and recommend funding of project proposals. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 1, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Apache-Sitgreaves National Forests, Attention RAC Program Manager, P.O. Box 640, Springerville, Arizona, or by e-mail to *jfrivera@fs.fed.us,* or via facsimile to 928–333–5966.

Dated: July 8, 2011.

James E. Zornes,

Deputy Forest Supervisor.

[FR Doc. 2011–17852 Filed 7–14–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, August 23, 2011 and September 20, 2011. The purpose of these meetings is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meetings will be held August 23, 2011 and September 20, 2011.

ADDRESSES: The meetings will be held at the Southeast Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *jdefreest@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeff DeFreest, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 7, 2011.

Jeff DeFreest,

District Ranger.

[FR Doc. 2011–17708 Filed 7–14–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funds Availability Under the Rural Business Enterprise Grant Program To Provide Technical Assistance for Rural Transportation Systems

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service announces that the funds available under the Rural Business Enterprise Grant (RBEG) Program to provide Technical Assistance for Rural Transportation Systems are $499,000 for one single grant from the passenger transportation funds appropriated for the RBEG program and $249,767 for another single grant for Federally Recognized Native American Tribes' from funds appropriated for the RBEG program.

SUPPLEMENTARY INFORMATON: A Notice of Solicitation of Applications for Inviting Rural Business Enterprise Grant Program Applications for Grants To Provide Technical Assistance for Rural Transportation Systems was published on January 20, 2011 (76 FR 3605–8).

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must have a Dun and Bradstreet Data Universal Number System (DUNS) number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webor.* Similarly, in accordance with 2 CFR part 25, all applicants must be registered in the Central Contractor Registration (CCR) prior to submitting an application. Applicants may register for the CCR at *http://www.ccr.gov,* or by calling 1–866–606–8220 and press ''1'' for CCR. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

Nondiscrimination Statement

''The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.''

Dated: July 5, 2011.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2011–17760 Filed 7–14–11; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2012 Economic Census Covering the Wholesale Trade Sector.

Form Number(s): Various.

OMB Control Number: 0607–0929.

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

Burden Hours: 675,000 in FY 2013.

Number of Respondents: 450,000.

Average Hours per Response: 1.5 hours.

Needs and Uses: The 2012 Economic Census covering the Wholesale Trade sector will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of more than 450,000 wholesale establishments classified in the North American Industry Classification System (NAICS).

The Wholesale Trade sector comprises establishments engaged in wholesaling merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. Wholesalers are organized to sell or arrange the purchase or sale of (a) goods for resale (i.e., goods sold to other wholesalers or retailers), (b) capital or durable nonconsumer goods, and (c) raw and intermediate materials and supplies used in production. The economic census will produce basic statistics by kind of business on number of establishments, sales, payroll, employment, inventories, and operating expenses. It also will yield a variety of subject statistics, including sales by product line; sales by class of customer; employment by primary function; measures of gross margin and gross profit; and other industry-specific measures, such as bulk storage capacity by type of facility for petroleum bulk stations and terminals. Basic statistics will be summarized for the United States, states, metropolitan areas, counties, and places. Tabulations of subject statistics also will present data

for the United States and, in some cases, for states.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. The Federal Government uses information from the economic census as an important part of the framework for the national income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration.

Further, the census provides sampling frames and benchmarks for current surveys of business which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of gross domestic product. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographic areas for use in policy-making, planning, and program administration. Finally, industry, business, academe, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

If the economic census was not conducted, the Federal Government would lose vital source data and benchmarks for the national accounts, input-output tables, and other composite measures of economic activity, causing a substantial degradation in the quality of these important statistics. Further, the government would lose critical benchmarks for current sample-based economic surveys and an essential source of detailed, comprehensive economic information for use in policy-making, planning, and program administration.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 and 224.

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

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

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

Dated: July 12, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–17849 Filed 7–14–11; 8:45 am]

BILLING CODE 3510–07–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: Bureau of Industry and Security (BIS).

Title: Entity List Requests.

OMB Control Number: 0694–0134.

Form Number(s): N/A.

Type of Request: Regular submission (extension of a currently approved information collection).

Burden Hours: 105.

Number of Respondents: 7.

Average Hours per Response: 15 hours.

Needs and Uses: This collection is needed to provide a procedure for persons or organizations listed on the Entity List to request removal or modification of the entry that affects them. The Entity List appears at 15 CFR part 744, Supp. No. 4. The Entity List is used to inform the public of certain parties whose presence in a transaction that is subject to the Export Administration Regulations (15 CFR parts 730–799) requires a license from BIS. This is a voluntary collection.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

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 Jasmeet Seehra, OMB Desk Officer, e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or fax to (202) 395–5167.

Dated: July 11, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–17751 Filed 7–14–11; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Mahan Airways, et al.; Modification of Temporary Denial Order To Add Zarand Aviation as a Denied Person

Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran; Zarand Aviation, a/k/a GIE Zarand Aviation, 42 Avenue Montaigne, 75008 Paris, France; and *112 Avenue Kleber, 75116 Paris, France; Gatewick LLC, a/k/a Gatewick Freight & Cargo Services, a/k/a/Gatewick Aviation Services, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates;* and *P.O. Box 52404, Dubai, United Arab Emirates;* and *Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; Pejman Mahmood Kosarayanifard, a/k/a Kosarian Fard, P.O. Box 52404, Dubai, United Arab Emirates; Mahmoud Amini, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates;* and *P.O. Box 52404, Dubai, United Arab Emirates;* and *Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates.*

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR Parts 730–774 (2011) (''EAR'' or the ''Regulations''), I hereby grant the request of the Office of Export Enforcement (''OEE'') to modify the February 25, 2011 Renewal Order Temporarily Denying the Export Privileges of Mahan Airways, Gatewick LLC, Pejman Mahmood Kosarayanifard, and Mahmoud Amini, as I find that modification of the Temporary Denial Order (''TDO'') is necessary in the public interest to prevent an imminent violation of the EAR.[1] Specifically I find

[1] The February 25, 2011 Order was published in the **Federal Register** on March 7, 2011. See 76 FR 112318.

it necessary to add the following person as an additional Respondent in order to prevent an imminent violation of the TDO:

Zarand Aviation, a/k/a GIE Zarand Aviation, 42 Avenue Montaigne, 75008 Paris France, and *12 rue Avenue Kleber, 75116 Paris, France.*

I. Procedural History

On March 17, 2008, Darryl W. Jackson, the then-Assistant Secretary of Commerce for Export Enforcement (''Assistant Secretary''), signed a TDO denying Mahan Airways' export privileges for a period of 180 days on the grounds that its issuance was necessary in the public interest to prevent an imminent violation of the Regulations. The TDO also named as denied persons Blue Airways, of Yerevan, Armenia (''Blue Airways of Armenia''), as well as the ''Balli Group Respondents,'' namely, Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., and Blue Sky Six Ltd., all of the United Kingdom. The TDO was issued ex parte pursuant to Section 766.24(a), and went into effect on March 21, 2008, the date it was published in the **Federal Register**.[2]

II. Temporarily Denying Zarand Aviation's Export Privileges

A. Legal Standard

Pursuant to Section 766.24(b) of the Regulations, BIS may issue an order temporarily denying a Respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1).

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

B. BIS's Request To Add Zarand Aviation to the TDO

OEE has presented evidence that a French registered Airbus A310 aircraft (tail number F–OJHH) currently owned by Zarand Aviation has been temporarily grounded at Birmingham airport in the United Kingdom (''U.K.''). The aircraft is powered with U.S.-origin engines, items subject to the EAR and classified as Export Control Classification (''ECCN'') 9A991.d. Because the aircraft contains U.S.-origin items valued at more than 10 percent of the total value of the aircraft, it is also subject to the EAR if re-exported to Iran and classified as ECCN 9A991.b. Prior to its grounding by U.K. officials, this aircraft was scheduled to depart from the U.K. to Tehran, Iran. Publicly available evidence submitted by OEE shows the aircraft bearing the livery, colors and logo of Mahan Airways, a denied person under the TDO and, as discussed in the TDO, an Iranian airline that operates out of Tehran, Iran, a country group E:1 destination.[3] Moreover, French Civil Aviation records show the aircraft is being leased to Mahan Airways. Additionally, Zarand Aviation's corporate registration documents list as a board member a related Mahan Airways entity, specifically Mahan Air General Trading.

The re-export of the aircraft to or for the use or benefit of Mahan Airways would violate the TDO and the Regulations. The TDO prohibits Mahan Airways from, inter alia, receiving, using, or transporting any item that is subject to the Regulations and has been exported from the United States. It also prohibits Mahan Airways from benefitting in any way from any transaction involving any item exported from the United States that is subject to the Regulations, or any other activity that is subject to the Regulations.

Moreover, under the TDO, no person may, directly or indirectly, export or reexport to or on behalf of Mahan Airways any item subject to the Regulations, or take any action that facilitates the acquisition or attempted acquisition by Mahan Airways of the ownership, possession, or control of any item that is subject to the Regulations and has been exported from the United States.

Furthermore, the reexport of the aircraft at issue, as described supra, without the U.S. Government authorization required by Section 746.7 of the Regulations would violate the Regulations.

C. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the record here, I find that the evidence presented by OEE convincingly demonstrates that a violation of the TDO and Regulations is imminent in both time and degree of likelihood. Adding Zarand Aviation to the February 25, 2011 Order is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with Zarand Aviation in export and re-export transactions involving items subject to the EAR.

Accordingly, I find pursuant to Section 766.24 that the addition of Zarand Aviation as an additional Respondent to the TDO is necessary in the public interest to prevent an imminent violation of the EAR. Zarand Aviation's export privileges are being temporarily denied on an ex parte basis without a hearing based upon BIS's showing of an imminent violation.

IV. Order

It Is Therefore Ordered:

First, that Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran; Zarand Aviation, A/K/A Gie Zarand Aviation, 42 Avenue Montaigne, 75008 Paris, France, and 112 Avenue Kleber, 75116 Paris, France; Gatewick LLC, A/K/A Gatewick Freight & Cargo Services, A/K/A Gatewick Aviation Service, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; Pejman Mahmood Kosarayanifard A/K/A Kosarian Fard, P.O. Box 52404, Dubai, United Arab Emirates; and Mahmoud Amini, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity,

[2] The TDO was subsequently renewed in accordance with Section 766.24(d) of the Regulations on September 17, 2008, March 16, 2009, September 11, 2009, March 9, 2010, September 3, 2010, and most recently on February 24, 2011. Prior to each renewal, each Respondent was given the opportunity to oppose renewal in accordance with Section 766.24(d)(3) of the Regulations. Each renewal order was published in the **Federal Register**. As of March 9, 2010, the Balli Group Respondents and Blue Airways were no longer subject to the TDO.

[3] See Supplement No. 1 to 15 CFR Part 740.

software or technology (hereinafter collectively referred to as ''item'' exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Sections 766.24(e) of the EAR, Zarand Aviation, at any time, may appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard AU Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

A copy of this Order shall be sent to Zarand Aviation and shall be published in the **Federal Register**. This Order is effective immediately and shall remain in effect until August 24, 2011, unless renewed in accordance with Section 766.24(d) of the Regulations.

Dated: July 1, 2011.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2011–17580 Filed 7–14–11; 8:45 am]

BILLING CODE XXXX–XX–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

DATES: *Effective Date:* July 15, 2011.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on diamond sawblades and parts thereof from the People's Republic of China for the period January 23, 2009, through October 31, 2010. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 81565 (December 28, 2010). The preliminary results of the review are currently due no later than August 2, 2011.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of this review within the original time limit because of the complexity of gathering information and comments concerning the selection of a surrogate country and surrogate values and because of the extensions we have granted at the request of various parties during the course of the review. Therefore, we are extending the time period for issuing the preliminary results of this review by 85 days until October 26, 2011.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: July 11, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–17902 Filed 7–14–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Lingjun Wang, 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) 482–0780 or (202) 482–2316, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2010, the Department of Commerce (''Department'') published a notice of initiation of an administrative review of fresh garlic from the People's Republic of China covering the period November 1, 2009, through October 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 81565 (December 28, 2010). The preliminary results of this administrative review are currently due no later than August 2, 2011.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue its preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the order for which the administrative review was requested. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we determine that it is not practicable to complete the results of this review within the original time limit. Specifically, the Department requires additional time to analyze questionnaire responses, to issue supplemental questionnaires, and to evaluate the most appropriate surrogate values to use in this segment of the proceeding. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department has decided to extend the time limit for the preliminary results from 245 days to 345 days. The preliminary results will now be due no later than November 10, 2011. Unless extended, the final results continue to be due 120 days after the publication of the preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: July 11, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–17900 Filed 7–14–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Final Results of Antidumping Duty New Shipper Review

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

SUMMARY: The Department of Commerce (''Department'') is extending the time limit for the final results of the new shipper review of certain frozen warmwater shrimp from the Socialist Republic of Vietnam (''Vietnam''). The review covers the period February 1, 2010, through July 31, 2010.

DATES: *Effective Date:* July 15, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0413.

Background

On April 13, 2011, the Department published in the **Federal Register** the preliminary results of the new shipper review of shrimp from Vietnam.[1] The respondent in this new shipper review is Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd. The final results are currently due no later than July 5, 2011.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the ''Act''), and section 351.214(i)(1) of the Department's regulations, require the Department to issue the final results in a new shipper review 90 days after the date on which the preliminary results are issued. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated.[2]

Extension of Time Limit for Final Results of Review

We determine that this case is extraordinarily complicated because the Department requires additional time to analyze issues involving the wage rate calculation. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act, and section 351.214(i)(2) of the Department's regulations, we are extending the time for the completion of the final results of this review by 30 days to August 4, 2011.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–17725 Filed 7–14–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review

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

DATES: *Effective Date:* July 15, 2011.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Mark Hoadley, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–1396 and (202) 482–3148, respectively.

Background

On January 31, 2011, the Department of Commerce (the Department) initiated a new shipper review under the antidumping duty order on chlorinated isocyanurates from the People's Republic of China for Heze Huayi Chemical Co., Ltd. The period of review (POR) is June 1, 2010, through December 31, 2010. *See Chlorinated Isocyanurates From the People's Republic of China: Initiation of New Shipper Review*, 76 FR 6399 (February

[1] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty New Shipper Review,* 76 FR 20627 (April 13, 2011).

[2] See section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the Department's regulations.

4, 2011). The current deadline for the preliminary results is July 30, 2011.

Extension of Time Limit for the Preliminary Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the review was initiated, and the final results of the review within 90 days after the date on which the preliminary results were issued. However, if the Department concludes that a new shipper review is extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2) allow the Department to extend the 180-day period to 300 days, and to extend the 90-day period to 150 days. The Department has determined that this new shipper review involves extraordinarily complicated issues, including shipments of subject merchandise through U.S. ports to a third country. Additional time is also required to ensure that the Department can fully examine whether the sale under review is *bona fide* for the company under review.

Therefore, the Department is extending the deadline for completion of the preliminary results of the new shipper reviews to 280 days, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). Accordingly, the deadline for the completion of these preliminary results is now no later than November 7, 2011.

This notice is issued and published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: July 7, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–17907 Filed 7–14–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review

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

DATES: *Effective Date:* July 15, 2011.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Mark Hoadley, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1396 and (202) 482–3148, respectively.

Background

On January 31, 2011, the Department of Commerce (the Department) initiated a new shipper review under the antidumping duty order on chlorinated isocyanurates from the People's Republic of China for Heze Huayi Chemical Co., Ltd. The period of review (POR) is June 1, 2010, through December 31, 2010. *See Chlorinated Isocyanurates From the People's Republic of China: Initiation of New Shipper Review,* 76 FR 6399 (February 4, 2011). The current deadline for the preliminary results is July 30, 2011.

Extension of Time Limit for the Preliminary Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the review was initiated, and the final results of the review within 90 days after the date on which the preliminary results were issued. However, if the Department concludes that a new shipper review is extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2) allow the Department to extend the 180-day period to 300 days, and to extend the 90-day period to 150 days. The Department has determined that this new shipper review involves extraordinarily complicated issues, including shipments of subject merchandise through U.S. ports to a third country. Additional time is also required to ensure that the Department can fully examine whether the sale under review is *bona fide* for the company under review.

Therefore, the Department is extending the deadline for completion of the preliminary results of the new shipper reviews to 280 days, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). Accordingly, the deadline for the completion of these preliminary results is now no later than November 7, 2011.

This notice is issued and published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: July 11, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–17904 Filed 7–14–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804, A–412–801]

Ball Bearings and Parts Thereof From Japan and the United Kingdom: Revocation of Antidumping Duty Orders

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

SUMMARY: The Department of Commerce (the Department) is revoking the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom.

DATES: *Effective Date:* July 16, 2011.

FOR FURTHER INFORMATION CONTACT: Sandra Stewart or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0768 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department published the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom (collectively, the orders) in the **Federal Register**. See *Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings, and Parts Thereof From Japan,* 54 FR 20904 (May 15, 1989), and *Antidumping Duty Orders and Amendments to the Final Determinations of Sales at Less Than Fair Value: Ball Bearings, and Cylindrical Roller Bearings and Parts Thereof From the United Kingdom,* 54 FR 20910 (May 15, 1989). Pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the Department initiated and the U.S. International Trade Commission (ITC) instituted the second sunset reviews of the orders on June 1, 2005. See *Initiation of Five-year (''Sunset'') Reviews,* 70 FR 31423 (June 1, 2005); *Certain Bearings From China, France, Germany, Italy, Japan, Singapore, and the United Kingdom,* 70 FR 31531 (June 1, 2005); see also 19 CFR 351.218. As a result of its reviews, the Department found that revocation of the

antidumping duty orders would be likely to lead to the continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the orders to be revoked. See *Antifriction Bearings and Parts Thereof from France, Germany, Italy, and the United Kingdom; Five-Year Sunset Reviews of Antidumping Duty Orders; Final Results,* 70 FR 58183 (October 5, 2005), *Ball Bearings and Parts Thereof from Japan and Singapore; Five-year Sunset Reviews of Antidumping Duty Orders; Final Results,* 71 FR 26321 (May 4, 2006), and *Ball Bearings and Parts Thereof from Japan; Five-year Sunset Review of Antidumping Duty Order: Amended Final Results,* 71 FR 30378 (May 26, 2006).

On August 31, 2006, the ITC published its determination that, pursuant to section 751(c) of the Act, revocation of the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom, among others, would be likely to lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See *Certain Bearings From China, France, Germany, Italy, Japan, Singapore, and the United Kingdom,* 71 FR 51850 (August 31, 2006), and ITC Publication 3876 (August 2006) entitled *Certain Bearings from China, France, Germany, Italy, Japan, Singapore, and the United Kingdom, Investigation Nos.* 731–TA–344, 391–A, 392–A *and C,* 393–A, 394–A, 396, *and* 399–A (*Second Review*). NSK Corporation, NSK Ltd., and NSK Europe Ltd. and JTEKT Corporation and Koyo Corporation of U.S.A. appealed to the Court of International Trade (CIT), challenging the ITC determinations on certain ball bearings and parts thereof from Japan and the United Kingdom.

In its third and fourth remand determinations,[1] the ITC found that revocation of the orders would not be likely to lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. On April 20, 2011, the CIT affirmed the ITC's fourth remand and entered judgment in the case. See *NSK* v. *United States,* Court No. 06–334, Slip Op. 11–43 (CIT April 20, 2011) (NSK). The CIT stayed the effect of its judgment temporarily but lifted the stay on May 13, 2011. On May 17, 2011, the Court of Appeals for the Federal Circuit issued a temporary stay of the judgment in *NSK Corp.* v. *United States,* Court Nos. 2011–1362, –1382, –1383 (Fed. Cir. May 17, 2011).

On June 17, 2011, in response to the CIT's entry of judgment in NSK, the Department published notice of a court decision not in harmony with a Department determination, thereby suspending liquidation of all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after July 11, 2005, that remain unliquidated, and not deemed liquidated, as of April 30, 2011. See *Ball Bearings and Parts Thereof From Japan and the United Kingdom: Notice of Court Decision Not in Harmony with Continuation of Antidumping Duty Orders,* 76 FR 35401 (June 17, 2011) (*Timken* Notice).

On July 6, 2011, the Federal Circuit's stay lifted. See *NSK* v. *United States,* Nos. 2011–1362, –1382, –1383, –1454 (Fed. Cir. July 6, 2011). Therefore, pursuant to the CIT's judgment in *NSK,* the Department is revoking the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom.

Scope of the Orders

The products covered by the orders are ball bearings and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.10, 4016.93.50, 6909.19.50.10, 8414.90.41.75, 8431.20.00, 8431.39.00.10, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.25.80, 8482.99.65.95, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.93.30, 8708.93.60.00, 8708.99.06, 8708.99.31.00, 8708.99.40.00, 8708.99.49.60, 8708.99.58, 8708.99.80.15, 8708.99.80.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90, 8708.30.50.90, 8708.40.75.70, 8708.40.75.80, 8708.50.79.00, 8708.50.89.00, 8708.50.91.50, 8708.50.99.00, 8708.70.60.60, 8708.80.65.90, 8708.93.75.00, 8708.94.75, 8708.95.20.00, 8708.99.55.00, 8708.99.68, and 8708.99.81.80.

Although the HTSUS item numbers above are provided for convenience and customs purposes, the written descriptions of the scope of the orders remain dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by one of the orders. The orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, *etc.*) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of the orders. For unfinished parts, such parts are included if they have been heat-treated or if heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the orders are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of the orders.

Revocation

Pursuant to the Federal Circuit's decision in *Diamond Sawblades*[2] and the CIT's decision in *NSK* affirming the ITC's determinations that the revocation of the orders is not likely to lead to the continuation or recurrence of material injury within a reasonably foreseeable time, the Department is revoking the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom pursuant to section 751(d) of the Act. As a result of this revocation, the Department is discontinuing all unfinished administrative reviews immediately and will not initiate any new administrative reviews of the orders.

Furthermore, the Department will instruct U.S. Customs and Border Protection to discontinue the collection of cash deposits for estimated antidumping duties, effective July 16, 2011, which is 10 days after the Federal Circuit lifted the temporary stay.

As explained in the *Timken* Notice and pursuant to *Timken,*[3] *Hosiden,*[4] and

[1] See ITC Publication 4194, *Ball Bearings and Parts thereof from Japan and the United Kingdom, Investigation Nos. 731–TA–394A and 399A (Second Review) (Third Remand)* (August 2010), and ITC Publication 4223, *Certain Ball Bearings and Parts Thereof from Japan and the United Kingdom, Investigation Nos. 394–A and 399–A (Second Review) (Fourth Remand)* (March 2011).

[2] See *Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[3] See *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[4] See *Hosiden Corp.* v. *United States,* 861 F. Supp. 115 (Fed. Cir. 1994) *(Hosiden*).

Diamond Sawblades, the suspension of liquidation on all entries of ball bearings and parts thereof from Japan and the United Kingdom entered, or withdrawn from warehouse, for consumption on or after July 11, 2005, that remained unliquidated and not deemed liquidated as of April 30, 2011, will continue until there is a ''final and conclusive'' court decision.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

These revocations pursuant to five-year (sunset) reviews are in accordance with sections 751(c) and 751(d)(2) of the Act and this notice is published pursuant to section 777(i)(1) of the Act.

Dated: July 11, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–17899 Filed 7–14–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Region Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 13, 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 Patsy A. Bearden, (907) 586–7008 or *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

National Marine Fisheries Service (NMFS) Alaska Region manages the United States (U.S.) groundfish fisheries of the Exclusive Economic Zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (FMPs). The North Pacific Fishery Management Council prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The regulations implementing the FMPs are at 50 CFR part 679.

The recordkeeping and reporting requirements at 50 CFR part 679 form the basis for this collection of information. NMFS Alaska Region requests information from participating groundfish participants. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of the groundfish fisheries of the EEZ off Alaska.

II. Method of Collection

Paper and electronic logbooks, paper and electronic reports, and telephone calls are required from participants, and methods of submittal include Internet and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0213.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 899.

Estimated Time Per Response: 31 minutes for Mothership daily cumulative production logbook (DCPL) or electronic logbook (ELB); 30 minutes for Catcher/processor trawl gear DCPL or ELB; 41 minutes for Catcher/processor longline and pot gear DCPL; 18 minutes for Catcher Vessel trawl gear daily fishing logbook (DFL); 28 minutes for Catcher Vessel longline and pot gear DFL; 8 minutes for Shoreside Processor Check-in/Check-out Report; 7 minutes for Mothership or Catcher/processor Check-in/Check-out Report; 20 minutes for Product transfer report; 14 minutes for U.S. Vessel Activity Report; 23 minutes for buying station report.

Estimated Total Annual Burden Hours: 39,871.

Estimated Total Annual Cost to Public: $134,701.

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: July 11, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–17752 Filed 7–14–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Fagatele Bay National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Fagatele Bay National Marine Sanctuary Advisory Council: Business/Industry and Community-at-Large: Tutuila East Side. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and

management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's charter.

DATES: Applications are due by Monday, October 31, 2011.

ADDRESSES: Application kits may be obtained from Emily Gaskin in the Department of Commerce Office in the Executive Office Building. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Emily Gaskin, Department of Commerce Office, Executive Office Building, Utulei, American Samoa, 684–633–5155 ext. 271, *emily.gaskin@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Fagatele Bay National Marine Sanctuary Advisory Council was established in 1986 pursuant to Federal law to ensure continued public participation in the management of the sanctuary. The Sanctuary Advisory Council brings members of a diverse community together to provide advice to the Sanctuary Manager (delegated from the Secretary of Commerce and the Under Secretary for Oceans and Atmosphere) on the management and protection of the Sanctuary, or to assist the National Marine Sanctuary Program in guiding a proposed site through the designation or the periodic management plan review process.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: July 7, 2011.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–17809 Filed 7–14–11; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA563

Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary decision that an Exempted Fishing Permit (EFP) application contains all of the required information and now warrants public input on the application. This proposed project would be conducted by the Atlantic Offshore Lobstermen's Association (AOLA), in conjunction with scientists and the fishing industry, to help them understand the settlement and location of larval lobsters, and the size of the population in management Area 3. This EFP would excuse 11 commercial fishing vessels from the following Federal American lobster regulation: Mutilation requirement within American lobster management Area 3. The researchers propose to collect a pleopod (small swimmerettes located on the lower body at the front side of the tail section of the lobster) from a maximum of 100 sexually immature juvenile lobsters during the AOLA project. The lobsters would then be measured and their sex determined before immediately being returned alive to the ocean. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before August 1, 2011.

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *NERO.EFP@noaa.gov.* Include in the subject line ''Comments on AOLA Lobster Pleopod EFP.'' Comments may also be sent via facsimile to (978) 281–9135. Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on AOLA Lobster Pleopod EFP.''

FOR FURTHER INFORMATION CONTACT: Carol Shé, Fishery Policy Analyst, 978–282–8464, or *Carol.She@noaa.gov.*

SUPPLEMENTARY INFORMATION: AOLA submitted a complete application for an EFP on June 30, 2011, to conduct research activities that the regulations would otherwise restrict. This EFP requests an exemption for 11 Federal commercial fishing vessels from the following Federal regulation: Mutilation requirements in 50 CFR 697.20(c). This research would take place as part of the on-going research being conducted by AOLA under an EFP approved on April 29, 2011. The researchers propose to collect a pleopod (small swimmerettes located on the lower body at the front side of the tail section of the lobster) from a maximum of 100 sexually immature juvenile lobsters during the AOLA project. To remove a pleopod for genetic analysis the following procedure would be followed: The lobster would be placed upside down, on the sorting table or other flat surface, to expose the underside of the tail. A crew member would use a small pair of snips or scissors to clip off the most distant part of one pleopod, approximately .20 inches by .20 (5 millimeter (mm) by 5 mm in length). The specialized first pair of pleopods would be avoided, with all sampling coming from one of the rear pleopod sets. The impacts on the lobster resource would be negligible because: (1) The removal of the pleopod is not expected to result in mortality; and (2) 100 animals, in relation to the total American lobster population, is so small that any effects would not be able to be measured. Because this project is only relevant to the sampling and release of a maximum of 100 juvenile lobsters, there would be no impacts to habitat and protected species and there would be no impacts with respect to bycatch.

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

Dated: July 12, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–17896 Filed 7–14–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XA491]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coral and Coral Reefs off the Southern Atlantic States; Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Dr. Louis Daniel, on behalf of the North Carolina Division of Marine Fisheries. If granted, the EFP would authorize a maximum of 12 commercial fishing vessels to harvest and land South Atlantic snapper-

grouper species that are either currently prohibited to be harvested in general by the South Atlantic Snapper-Grouper Fishery Management Plan (FMP) (speckled hind and warsaw grouper) or are prohibited to be harvested beyond a depth of 240 ft (73.2 m) (blueline tilefish, misty grouper, queen snapper, silk snapper, snowy grouper, and yellowedge grouper). Authorized vessels would be eligible to harvest these species in the exclusive economic zone (EEZ) off North Carolina, specifically, the waters north of Cape Hatteras to the North Carolina/Virginia border. The purpose of this EFP would be to provide basic life history information for any fish harvested, particularly blueline tilefish. An additional purpose of the EFP would be to determine the distribution of speckled hind and warsaw grouper in the study area to determine if these species are bycatch in the commercial blueline tilefish component of the South Atlantic snapper-grouper fishery.

DATES: Comments must be received no later than 5 p.m., Eastern Time, on August 1, 2011.

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

- *E-mail: rick.devictor@noaa.gov.* Include in the subject line of the e-mail comment the following document identifier: LouisDaniel_EFP 2011.
- *Mail:* Rick DeVictor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

The application and related documents are available for review upon written request to any of the above addresses.

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, 727–824–5305; e-mail: *rick.devictor@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The proposed data collection involves activities otherwise prohibited by regulations at 50 CFR part 622, as they pertain to species managed by the South Atlantic Fishery Management Council (Council) specific to the commercial blueline tilefish component of the snapper-grouper fishery in the South Atlantic. This EFP would exempt designated project participants from regulations regarding the harvest and possession prohibition for speckled hind and warsaw grouper (§ 622.32(b)(3)(vii)), the area closure for deep-water snapper-grouper species (§ 622.35(o)), queen and silk snapper commercial size limits (§ 622.37(e)(1)(iii)), and the snowy grouper commercial trip limit (§ 622.44(c)(3)).

The data collection is authorized in Federal waters, off of North Carolina from a depth of 40 fathoms seaward to the EEZ limit between Cape Hatteras (35°15.03′ N. latitude) north to the North Carolina/Virginia state line (36°33.02′ N. latitude). The EFP would expire when one of the following criteria is met: 100 total trips are taken by the combined participants; 350,000 lb (158,757 kg) of blueline tilefish are landed; 50 fish total of speckled hind or warsaw grouper are landed in any combination; 30 of any one of the following deep-water snapper-grouper species are landed (misty grouper, queen snapper, silk snapper, and yellowedge grouper); 1 year from the start date of the EFP; or for other reasons determined to be appropriate by NMFS.

A maximum of 12 commercial fishing vessels would be allowed to participate. To be eligible, a vessel's 2009 commercial landings must have exceeded 500 lb (226.8 kg) of blueline tilefish in the EEZ waters off North Carolina, north of Cape Hatteras, as verified by the North Carolina trip ticket program. Vessels authorized by this EFP would have an observer onboard for 20 percent of all trips taken under the authority of the EFP. Observers would be selected by the North Carolina Division of Marine Fisheries. A NMFS port agent would collect life history information and otoliths from blueline tilefish, snowy grouper, speckled hind, and warsaw grouper to the extent possible. Sampled fish would be returned to the fisherman in a condition appropriate for sale. Under the EFP, speckled hind and warsaw grouper would not be eligible for sale, however, other deep-water snapper-grouper species would be eligible for sale, with the following condition: Snowy grouper would be eligible for sale up to 100 lb (45 kg) per trip, with a maximum of 10,000 lb (4,536 kg) for all the vessels for the duration of the EFP. The otoliths would be transported to the North Carolina Division of Marine Fisheries for storage and potential further analysis. All landings of blueline tilefish and snowy grouper would be deducted from the commercial annual catch limits for these species as established by the Council.

The purpose of this EFP would be to provide basic life history information of the fish harvested, particularly blueline tilefish. Another purpose of the EFP would be to determine the presence or absence of speckled hind and warsaw grouper north of Cape Hatteras, North Carolina, to determine if these species are bycatch by commercial blueline tilefish harvesters.

NMFS finds this application warrants further consideration. Based on a preliminary review, NMFS intends to issue the requested EFP, pending receipt of public comments, as per § 600.745(b)(3)(i). Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to, a prohibition on conducting research within marine protected areas, marine sanctuaries, special management zones, or artificial reefs without additional authorization. A report on the project findings is due at the end of the collection period, to be submitted to NMFS and reviewed by the Council.

A final decision on issuance of the EFP will depend on NMFS's review of public comments received on the application, consultations with the affected state, the Council, and the U.S. Coast Guard, as well as a determination that the EFP is consistent with all applicable laws.

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

Dated: July 12, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–17897 Filed 7–14–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA570

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Outreach and Education Advisory Panel.

DATES: The meeting will convene at 1 p.m. on Tuesday, August 2, 2011 and conclude by 12 p.m., Thursday, August 4, 2011.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607, telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Charlene Ponce, Public Information Officer; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

During this meeting, the Outreach and Education Advisory Panel will elect officers; receive a report on a Communications Audit conducted by University of South Florida students; discuss the possibility of conducting a stakeholder survey; review and finalize a five-year strategic communications plan; discuss reformatting of scoping meetings/public hearings; and discuss potential outreach opportunities for Council members. The panel may also provide recommendations to the Council on any or all of these issues.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Outreach and Education Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: July 11, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–17790 Filed 7–14–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA569

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public hearings on: Amendment 18 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Atlantic and Gulf of Mexico and Amendment 32 to the Reef Fish Fishery Management Plan in the Gulf of Mexico.

DATES: The public meetings will be held on August 1, 2011 through August 3, 2011 at seven locations throughout the Gulf of Mexico. The public hearings will begin at 6 p.m. and will conclude no later than 9 p.m. For specific dates see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The public meetings will be held at locations listed in the **SUPPLEMENTARY INFORMATION.**

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director/Senior Fishery Biologist (Amendment 18), Dr. Steven Atran, Population Dynamics Statistician (Amendment 32) at Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Coastal Migratory Pelagic Resources

The Gulf of Mexico Fishery Management Council will hold public hearings on Amendment 18 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Atlantic and Gulf of Mexico Including Environmental Assessment, Regulatory Impact Review, and Regulatory Flexibility Act Analysis. Amendment 18 contains alternatives for actions to set annual catch limits and accountability measures if such limits are exceeded for Gulf group king mackerel, Gulf group Spanish mackerel, and Gulf group cobia. It also contains measures to remove cero, little tunny, dolphin, and bluefish (Gulf) from the fishery management plan; revise the framework procedure; and separate cobia into Atlantic and Gulf migratory groups. Similar measures are being proposed for the Atlantic migratory stocks.

Reef Fish

Amendment 32 to the Reef Fish Fishery Management Plan establishes annual catch limits and annual catch targets for 2012 and 2015 for gag and for 2012 for red grouper. The Amendment also contains actions to: Establish a rebuilding plan for gag; set recreational bag limits, size limits and closed seasons for gag/red grouper in 2012; consider a commercial gag and shallow-water grouper quota adjustment to account for dead discards; make adjustment to multi-use IFQ shares in the grouper individual fishing quota program; reduce the commercial gag size limit; modify the offshore time and areas closures; and revise gag, red grouper, and shallow-water grouper accountability measures.

The Public Hearings will begin at 6 p.m. and conclude at the end of public testimony or no later than 9 p.m. at the following locations:

Monday, August 1, 2011, Amendment 18—Plantation Suites—1909 Hwy 361, Port Aransas, TX 78373, (361) 749–3866; Amendment 18—Courtyard Marriott Gulfport Beachfront Hotel, 1600 East Beach Blvd., Gulfport, MS 39501, (228) 864–4310; Amendment 32—Hyatt Place Ft. Myers at the Forum—2600 Champion Ring Road, Fort Myers, FL 33905, (239) 418–1844.

Tuesday, August 2, 2011, Amendment 18 and Amendment 32—Hilton St. Petersburg Carillon Park—950 Lake Carillon Drive—St. Petersburg, FL 33716—(727) 540–0050; Amendment 18—Fairfield Inn & Suites, 3111 Loop Road, Orange Beach, FL 36561, (251) 543–4444; Amendment 18—Louisiana Department of Wildlife and Fisheries Research Lab, 195 Ludwig Annex, Grand Isle, LA 70358, (985) 787–2163.

Wednesday, August 3, 2011, Amendment 18 and Amendment 32—Boardwalk Beach Resort, 9400 S. Thomas Drive, Panama City Beach, FL 32408, (850) 230–4681.

Copies of the documents can be obtained by calling (813) 348–1630.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: July 11, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–17789 Filed 7–14–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA572

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Joint Mid-Atlantic Fishery Management Council's and the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, Black Sea Bass, and Bluefish Industry Advisory Panels will hold public meetings.

DATES: The meeting will be held on Wednesday, August 10, 2011 from 10 a.m. to 3 p.m. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option. Details on webinar registration and the telephone-only connection details are available at: *http://www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331, extension 255.

SUPPLEMENTARY INFORMATION: The Scup, Black Sea Bass, Summer Flounder, and Bluefish Industry Advisory Panels will discuss the 2012 annual catch targets (ACTs) and management measures to achieve ACTs for the summer flounder, scup, black sea bass, and bluefish fisheries. Scup advisors will meet from 10 a.m. to 11 a.m., Black Sea Bass Advisors will meet from 11 a.m. to 12 p.m., Summer Flounder Advisors will meet from 1 p.m. to 2 p.m., and Bluefish Advisors will meet from 2 p.m. to 3 p.m.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified 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 the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: July 12, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–17893 Filed 7–14–11; 8:45 am]

BILLING CODE 3510–22–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 a product and services 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: 8/15/2011.

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 product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for 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 product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

NSN: 8140–00–NSH–0013—M183 Demolition Charge Box.

NPA: Northeastern Michigan Rehabilitation and Opportunity Center (NEMROC), Alpena, MI.

Contracting Activity: Dept of the Army, SR W39Z STK REC ACCT–CRANE AAP, Crane, IN.

Coverage: C–List for 100% of the requirement of the Crane Army Ammunition Activity as aggregated by the Department of the Army, U.S. Army Materiel Command, Crane Army Ammunitions Activity, Crane, IN.

Services

Service Type/Location: Custodial and Grounds Maintenance Services, Mill Creek Recreation Area, 3211 Reservoir Road, Walla Walla, WA.

NPA: Lillie Rice Center, Walla Walla, WA.

Contracting Activity: Dept of the Army, XU W071 Endist Walla Walla, Walla Walla, WA.

Service Type/Location: Warehouse Staffing Services, Warehouse Section—Building Branch—NOAA's Logistics Div., Building 22, 325 Broadway Street, Boulder, CO.
NPA: Bayaud Industries, Inc., Denver, CO.
Contracting Activity: Dept of Commmerce, National Oceanic and Atmospheric Administration, Boulder, CO.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–17861 Filed 7–14–11; 8:45 am]

BILLING CODE 6353–01–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 services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services from the Procurement List previously provided by such agencies.

DATES: *Effective Date:* 8/15/2011.

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 5/13/2011 (76 FR 28000–28001); 5/20/2011 (76 FR 29210–29211); and 5/27/2011 (76 FR 30923–30924), 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 services and impact of the additions on the current or most recent contractors, the Committee has determined that the 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 provide the services to the Government.
2. The action will result in authorizing small entities to provide the 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 services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Total Facility Maintenance, FCC—Equipment Developmental Group, 3600 Hiram-Lithia Springs Road, SW., Hiram, GA.
NPA: Bobby Dodd Institute, Inc., Atlanta, GA.
Contracting Activity: Federal Communications Commission, Washington, DC.

Service Type/Location: Janitorial Services, Muskogee Armed Force Reserve Center, 6800 S. Cherokee St., Muskogee, OK.
NPA: Golden Rule Industries of Muskogee, Inc., Muskogee, OK.
Contracting Activity: Dept of the Army, W7NV USPFO activity OK ARNG, Oklahoma, OK.

Service Type/Location Custodial and Maintenance Services, NOAA–Atlantic Oceanographic & Meteorological Laboratory (AOML), 4301 Rickenbacker Causeway, Miami, FL.
NPA: Goodwill Industries of South Florida, Inc., Miami, FL.
Contracting Activity: Dept of Commerce, National Oceanic and Atmospheric Administration, Kansas City, MO.

Service Type/Locations: Administrative Support Services, Communications Security Logistics Activity (USACSLA) Aberdeen Proving Ground, MD, Communications Security Logistics Activity (USACSLA), Fort Huachuca, AZ, U.S. Army Information Systems Engineering Command (USAISEC), Fort Huachuca, AZ.
NPA: DePaul Industries, Portland, OR.
Contracting Activity: Dept of the Army, W4GV FLD OFC FT HUACHUCA, Fort Huachuca, AZ.

Deletions

On 5/13/2011 (76 FR 28000–28001), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the 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 provide the 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 services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type/Location: Records Management Service, Veterans Affairs Medical Center, 4100 West 3rd Street, Dayton, OH.
NPA: Goodwill Easter Seals Miami Valley, Dayton, OH.
Contracting Activity: Department of Veterans Affairs, Dayton, OH.

Service Type/Location: Grounds Maintenance, Federal Service Center, 5600 Rickenbacker Road, Bell, CA.
NPA: Braswell Rehabilitation Institute for Development of Growth & Educational Services, Inc., Pomona, CA.
Contracting Activity: General Services Administration, FPDS Agency Coordinator, Washington, DC.

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center: Major Bias, Huntington, WV.
NPA: Goodwill Industries of KYOWVA Area, Inc., Huntington, WV.
Contracting Activity: Dept of the Army, W40M Natl Region Contract OFC, Washington, DC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–17862 Filed 7–14–11; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, July 20, 2011, 10 a.m.–12 Noon.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matters To Be Considered

Hearing: Agenda and Priorities for Fiscal Year 2013 Budget

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

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: July 13, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–18030 Filed 7–13–11; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, July 20, 2011, 2 p.m.–3 p.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matters To Be Considered

Decisional Matter:

(a) Phthalates Enforcement Policy

(b) ASTM F963 Notice of Requirements

A live webcast of the Meeting can be viewed at *www.cpsc.gov/webcast.*

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: July 13, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–18031 Filed 7–13–11; 4:15 pm]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled Forbearance Request for National Service Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Bruce Kellogg, at (202) 606–6954 or e-mail to *bkellogg@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, *Attn:* Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: (202) 395–6974, *Attention:* Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on May 5, 2011 (76 FR 25673). This comment period ended July 5, 2011. No public comments were received from this Notice.

Description: The Corporation is seeking approval of the Forbearance Request Form which is used by AmeriCorps members to request forbearance based on national service, by schools and lenders to verify eligibility for the forbearance, and by both parties to verify certain legal requirements.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Forbearance Request Form for National Service.

OMB Number: 3045–0030.

Agency Number: None.

Affected Public: Individuals who have enrolled in a term of national service who wish to postpone loan payments on qualified student loans while they serve.

Total Respondents: 1,200 responses annually.

Frequency: Some members do not have qualified student loans while others have several.

Average Time per Response: 10 minutes for members and institutions.

Estimated Total Burden Hours: 200.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: July 11, 2011.

Maggie Taylor-Coates,

Chief, Trust Operations Branch.

[FR Doc. 2011–17819 Filed 7–14–11; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public

information collection request (ICR) entitled National Service Trust Interest Payment Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Bruce Kellogg, at (202) 606–6954 or e-mail to *bkellogg@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: smar@omb.eop.gov.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on May 5, 2011. This comment period ended July 6, 2011. No public comments were received from this Notice.

Description: The Corporation is seeking approval of the Interest Payment Form which is used by AmeriCorps members to request interest payments, by schools and lenders to verify eligibility for the payments, and by both parties to verify certain legal requirements.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: National Service Trust Interest Payment Form.

OMB Number: 3045–0053.

Agency Number: None.

Affected Public: Individuals who have successfully completed a term of national service who wish to request payment of interest accruing on qualified student loans during the member's term of service in AmeriCorps.

Total Respondents: 4,000 responses annually.

Frequency: Some members do not have qualified student loans while others have several. Currently, about two-thirds of the interest payments are processed electronically. The Corporation expects the use of paper forms to continue to decrease.

Average Time per Response: 10 minutes for member and institution.

Estimated Total Burden Hours: 667 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: July 11, 2011.

Maggie Taylor-Coates,

Chief, Trust Operations Branch.

[FR Doc. 2011–17823 Filed 7–14–11; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent (NOI) To Prepare An Environmental Impact Statement (EIS) for Proposed Conversion to the F–15 Aircraft for the 144th Fighter Wing, California Air National Guard At Fresno-Yosemite International Airport, Fresno, CA

AGENCY: National Guard Bureau, Asset Management Division, Plans and Requirements Branch, Air National Guard Readiness Center.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and Air Force policy and procedures (32 CFR part 989), the National Guard Bureau is issuing this notice to advise the public of its intent to prepare an EIS to evaluate the potential environmental impacts that could result from the proposed conversion to the F–15 aircraft at the 144th Fighter Wing (144 FW) installation at Fresno-Yosemite International Airport.

As a result of the Combat Air Forces fighter reduction (CAF REDUX), the 144 FW at Fresno-Yosemite International Airport in Fresno, California is proposing to convert from F–16 Falcon primary assigned aircraft (PAA) and operations to F–15 Eagle PAA and operations. 144 FW personnel would be re-trained to maintain, operate, and provide air sovereignty alert capabilities for the airspace over California and its population centers. Alternative locations at military flying installations within the State of California were considered but dimissed due to a lack of minimum airfield requirements and existing facilities that could be modified at minimal cost. F–15 flying operations at the Fresno-Yosemite International Airport would remain at similar levels to the current F–16 operations or increase slightly, depending on the alternative selected. The EIS will also evaluate the potential impacts of converting the 144 FW's 3 F–16 alert aircraft based on March Air Reserve Base (ARB) in Riverside, CA to 3 F–15 aircraft.

The EIS will evaluate two action alternatives as well as the no-action alternative. The two action alternatives analyzed will be a conversion from 18 F–16 PAA to 18 F–15 PAA; or conversion to 24 F–15 PAA. The National Guard Bureau will conduct scoping meetings to solicit public input concerning the proposal. The scoping process will help identify issues to be addressed in the environmental analysis. Comments will be accepted at any time during the environmental impact analysis process. However, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, comments should be submitted to the address below by August 19, 2011. Notices will be posted and published in the Fresno Bee and the Riverside Press Enterprise. A scoping meeting will be held in the ballroom at the Piccadilly Inn—Airport, 5115 E. McKinley Avenue, Fresno, CA, on 2 August 2011; and a second scoping meeting will be held at the TownGate Community Center, 13100 Arbor Park Lane, Moreno Valley, CA on 4 August 2011, from 6–9 p.m.

FOR FURTHER INFORMATION CONTACT: Please direct any written comments or

requests for information to Robert Dogan, NGB/A7AM, at Shepperd Hall, 3501 Fetchet Avenue, Joint Base Andrews, Maryland, 20762–5157; (301) 836–8859 (phone/fax). Due to area code adjustments, this number is scheduled to change on or about 19 July 2011 to (240) 612–8859. Please use this number if the first one is not functioning.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2011–17889 Filed 7–14–11; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

[CFDA Number: 84.133B–1]

Applications for New Awards; Rehabilitation Research and Training Center—Interventions To Promote Community Living Among Individuals With Disabilities; Correction

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice; correction.

SUMMARY: On June 27, 2011, we published in the **Federal Register** (76 FR 37336–37341) a notice inviting applications for a new award for the Rehabilitation Research and Training Center (RRTC)—Interventions to Promote Community Living Among Individuals with Disabilities fiscal year (FY) 2011 competition. That notice incorrectly listed $700,000 as the amount of estimated available funds in the *Estimated Available Funds* section and $700,000 as the maximum proposed budget amount in the *Maximum Award* section. The correct amount of funds for estimated available funds and the maximum proposed budget is $850,000.

SUPPLEMENTARY INFORMATION: The Department of Education corrects the amount of funds listed under the headings *Estimated Available Funds* and *Maximum Award.* Specifically, we make the following corrections:

In column 1, on page 37337, we correct the *Estimated Available Funds* section to read: ''*Estimated Available Funds:* $850,000.

In column 2, on page 37337, we correct the Maximum Award sections to read: ''*Maximum Award:* We will reject any application that proposes a budget exceeding $850,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.''

FOR FURTHER INFORMATION CONTACT: Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by e-mail: *Lynn.Medley@ed.gov.*

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: 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: July 12, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–17860 Filed 7–14–11; 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 electric rate filings:

Docket Numbers: ER10–1836–001; ER10–2005–001; ER11–26–001; ER10–1839–001; ER10–1841–001; ER10–1843–001; ER10–1844–001; ER10–1845–001; ER10–1897–001; ER10–1905–001; ER10–1907–001; ER10–1918–001; ER10–1925–001; ER10–1927–001; ER10–1950–001; ER10–2006–002; ER10–1964–001; ER10–1965–001; ER10–1970–001; ER10–1972–001; ER10–1971–003; ER10–1983–001; ER10–1984–001; ER10–1991–001; ER10–2078–002.

Applicants: Ashtabula Wind, LLC, Ashtabula Wind II, LLC, Ashtabula Wind III, LLC, Badger Windpower, LLC, Butler Ridge Wind Energy Center, LLC, Crystal Lake Wind, LLC, Crystal Lake Winder II, LLC, Crystal Lake Wind III, LLC, FPL Energy Hancock County Wind, LLC, FPL Energy Mower County, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy Oliver Wind I, LLC, FPL Energy Wind II, LLC, Garden Wind LLC, Hawkeye Power Partners, LLC, Lake Bend Power Partners II, LLC, Langdon Wind, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Power Marketing, LLC, Osceola Windpower, LLC, Osceola Windpower II, LLC, Story Wind, LLC, White Oak Energy LLC.

Description: NextEra Energy Entities' Notice of Non-material Change in Status.

Filed Date: 07/08/2011.

Accession Number: 20110708–5148.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Docket Numbers: ER10–2670–003; ER10–2669–003; ER10–2671–003; ER10–2673–003; ER10–2253–004; ER10–3319–005; ER10–2674–003; ER10–1543–002; ER10–1544–002; ER10–2627–003; ER10–2629–003; ER10–1546–004; ER10–1547–003; ER10–1549–002; ER10–2675–003; ER10–2676–003; ER10–2636–003; ER10–1975–005; ER10–1974–005; ER10–1550–004; ER11–2424–006; ER10–2677–003; ER10–1551–003; ER10–2678–002; ER10–2638–003.

Applicants: ANP Bellingham Energy Company, LLC,ANP Blackstone Energy Company, LLC, ANP Funding I LLC, Armstrong Energy Limited Partnership, L.L.L.P., Astoria Energy II LLC, Astoria

Energy LLC, Calumet Energy Team, LLC, Choctaw Gas Generation, LLC, Choctaw Generation Limited Partnership, FirstLight Hydro Generating Company, FirstLight Power Resources Management, LLC, GDF SUEZ Energy Marketing NA, Inc., Hopewell Cogeneration Ltd Partnership, Hot Spring Power Company, LLC, IPA Trading, Inc., Milford Power Limited Partnership, Mt. Tom Generating Company, LLC, North Jersey Energy Associates, L.P., Northeast Energy Associates, L.P., Northeastern Power Company, Pinetree Power-Tamworth, Inc., Pleasants Energy, LLC, Syracuse Energy Corporation, Troy Energy, LLC, Waterbury Generation, LLC.

Description: Notice of Non-Material Change in Status of the GDF SUEZ Companies.

Filed Date: 07/08/2011.

Accession Number: 20110708–5132.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 11, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–17831 Filed 7–14–11; 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 Numbers: RP11–2245–000.

Applicants: Kinder Morgan Interstate Gas Transmission LLC.

Description: Kinder Morgan Interstate Gas Transmission LLC. submits tariff filing per 154.204: Negotiated Rate 2011–06–30 Mieco to be effective 7/2/2011.

Filed Date: 07/01/2011.

Accession Number: 20110701–5087.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 13, 2011.

Docket Numbers: RP11–2246–000.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits tariff filing per 154.601: Negotiated Rate, Northern Indiana PS to be effective 7/1/2011.

Filed Date: 07/01/2011.

Accession Number: 20110701–5088.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 13, 2011.

Docket Numbers: RP11–2247–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Willmut to BP Capacity Release Negotiated Rate Agreement Filing to be effective 7/1/2011.

Filed Date: 07/01/2011.

Accession Number: 20110701–5090.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 13, 2011.

Docket Numbers: RP11–2248–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK 37733 to Texla 38957 Capacity Release Negotiated Rate Agreement to be effective 7/1/2011.

Filed Date: 07/01/2011.

Accession Number: 20110701–5098.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 13, 2011.

Docket Numbers: RP11–2249–000.

Applicants: WTG Hugoton, LP.

Description: WTG Hugoton, LP submits tariff filing per 154.203: Annual Fuel Retention Percentage Filing 2011–2012 to be effective 8/1/2011.

Filed Date: 07/01/2011.

Accession Number: 20110701–5154.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 13, 2011.

Docket Numbers: RP11–2250–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: No-Notice Capacity Reductions Filing to be effective 8/1/2011.

Filed Date: 07/01/2011.

Accession Number: 20110701–5186.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 13, 2011.

Docket Numbers: RP11–2251–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Request for Termination of Certain Gathering Services of Gulf South Pipeline Company, LP.

Filed Date: 07/01/2011.

Accession Number: 20110701–5210.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 13, 2011.

Docket Numbers: RP11–2252–000.

Applicants: Big Sandy Pipeline, LLC.

Description: Big Sandy Pipeline, LLC submits tariff filing per 154.403: Annual Electric Power Cost Tracker Surcharge Filing to be effective 8/1/2011.

Filed Date: 07/01/2011.

Accession Number: 20110701–5229.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 13, 2011.

Docket Numbers: RP11–2253–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: TCRA Out-Of-Cycle to be effective 8/1/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5250.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 13, 2011.

Docket Numbers: RP11–2254–000.
Applicants: Midwestern Gas Transmission Company.
Description: Midwestern Gas Transmission Company submits tariff filing per 154.204: Omnibus to be effective 8/1/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5267.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 13, 2011.

Docket Numbers: RP11–2255–000.
Applicants: MIGC LLC.
Description: MIGC LLC submits tariff filing per 154.204: MIGC LLC Fuel Filing to be effective 8/1/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5280.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 13, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 5, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–17832 Filed 7–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #3

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1790–004, ER10–2596–001, ER10–2597–001.
Applicants: BP Energy Company, Fowler Ridge II Wind Farm LLC, Fowler Ridge III Wind Farm LLC.
Description: Updated Market Power Analysis for NE Region.
Filed Date: 06/30/2011.
Accession Number: 20110630–5273.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–1852–001, ER10–1842–001, ER10–1971–001.
Applicants: Florida Power & Light Company.
Description: NextEra Energy Companies' Triennial Market Power Update for the Southeast Region.
Filed Date: 06/30/2011.
Accession Number: 20110630–5274.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–2480–001.
Applicants: Berkshire Power Company, LLC.
Description: Market Power Update of Berkshire Power Company, LLC.
Filed Date: 06/30/2011.
Accession Number: 20110630–5289.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–2633–006, ER10–2718–006, ER10–2719–006, ER10–2717–006.
Applicants: Cogen Technologies Linden Venture, L.P., EFS Parlin Holdings, LLC, Birchwood Power Partners, L.P., East Coast Power Linden Holding, L.L.C.
Description: Triennial Market Power Analysis of Birchwood Power Partners, L.P., et al.
Filed Date: 06/29/2011.
Accession Number: 20110629–5186.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–2727–002, ER10–2729–003, ER11–3898–001, ER11–3900–001, ER11–3899–001, ER11–3901–001, ER11–3903–001, ER10–2728–003, ER11–3902–001, ER11–3909–001, ER10–2687–002, ER10–1478–002, ER11–3908–001, ER11–3907–001, ER11–3906–001, ER10–2688–004, ER10–2689–004.
Applicants: Allegheny Energy Supply Company, LLC.
Description: Change in Status Resulting from Transfer of American Transmission Systems, Inc. into PJM Interconnection, LLC Filed by FirstEnergy Service Company.
Filed Date: 06/30/2011.
Accession Number: 20110630–5279.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER10–2794–002, ER10–2849–001, ER11–2028–002, ER11–3642–002.
Applicants: EDF Trading North America, LLC, EDF Industrial Power Services (IL), LLC, EDF Industrial Power Services (NY), LLC, Tanner Street Generation, LLC.
Description: EDF Trading North America, LLC; EDF Industrial Power Services (NY); EDF Industrial Power Services (IL); and Tanner Street Triennial MBR Update.
Filed Date: 06/30/2011.
Accession Number: 20110630–5264.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–2959–001, ER10–2961–001, ER10–2934–001, ER10–2950–001.
Applicants: Chambers Cogeneration, Limited Partnership, Edgecombe Genco, LLC, Logan Generating Company, L.P., Spruance Genco, LLC.
Description: Updated Market Power Analysis for the Northeast Region of Chambers Cogeneration, Limited Partnership, *et al.*
Filed Date: 06/30/2011.
Accession Number: 20110630–5257.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–3099–001.

Applicants: RC Cape May Holdings, LLC.

Description: RC Cape May Holdings, LLC's Updated Market Power Analysis.

Filed Date: 06/30/2011.

Accession Number: 20110630–5157.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–3142–001, ER10–3145–001, ER10–3147–001, ER10–3148–001, ER10–3114–001, ER10–3116–001, ER10–3118–001, ER10–3120–001, ER10–3121–001, ER11–2036–001, ER10–3126–001, ER10–3128–001, ER10–3131–001, ER10–1800–001, ER10–3136–001, ER11–2701–002.

Applicants: Mountain View Power Partners, LLC, Indianapolis Power & Light Company, AES Eastern Energy, LP, AES Energy Storage, LLC, AES Alamitos, LLC, AES Redondo Beach, L.L.C., Condon Wind Power, LLC, AES Huntington Beach, L.L.C., AES Armenia Mountain Wind, LLC, AES Creative Resources, L.P., AES ES WESTOVER, LLC, AES Ironwood, L.L.C., AES Red Oak, L.L.C., AES Laurel Mountain, LLC, AEE2, L.L.C., Mountain View Power Partners IV, LLC.

Description: AES MBR Affiliates Triennial Market Power Analysis for the Northeast Region.

Filed Date: 06/30/2011.

Accession Number: 20110630–5284.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–2363–001, ER11–2364–001.

Applicants: Sandy Ridge Wind, LLC, Chestnut Flats Wind, LLC.

Description: Updated Market Power Analysis for the Northeast Region of Chestnut Flats Wind, LLC and Sandy Ridge Wind, LLC.

Filed Date: 06/30/2011.

Accession Number: 20110630–5159.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–3859–001, ER11–3863–001, ER11–3861–001, ER11–3864–001, ER11–3866–001, ER11–3867–001, ER11–3857–001.

Applicants: Milford Power Company, LLC, MASSPOWER, Lake Road Generating Company, L.P., EquiPower Resources Management, LLC, Dighton Power, LLC, Empire Generating Co, LLC, ECP Energy I, LLC.

Description: Updated Market Power Analysis of ECP MBR Sellers.

Filed Date: 06/30/2011.

Accession Number: 20110630–5293.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–3976–000.

Applicants: Upper Peninsula Power Company.

Description: Notice of Cancellation of Service Agreement 14U by Upper Peninsula Power Company.

Filed Date: 06/30/2011.

Accession Number: 20110630–5267.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3977–000.

Applicants: The United Illuminating Company.

Description: The United Illuminating Company Request for Incentive ROE for CT NEEWS Projects.

Filed Date: 06/30/2011.

Accession Number: 20110630–5271.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA11–9–000.

Applicants: TransCanada Maine Wind Development Inc.

Description: TransCanada Maine Wind Development Inc. Application for a waiver of the Commission's OATT, OASIS, and Standards of Conduct requirements.

Filed Date: 06/30/2011.

Accession Number: 20110630–5259.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 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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Dated: July 1, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–17834 Filed 7–14–11; 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: ER11–3939–000.

Applicants: Wapsipinicon Wind Project, LLC.

Description: Wapsipinicon Wind Project, LLC submits tariff filing per 35: Wapsipinico Seller Category Compliance Filing to be effective 6/30/2011.

Filed Date: 06/30/2011.

Accession Number: 20110630–5000.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3940–000.
Applicants: Waterside Power, LLC.
Description: Waterside Power, LLC submits tariff filing per 35: Market-Based Rate Tariff Compliance Filing to be effective 9/28/2010 under ER11–3940.
Filed Date: 06/30/2011.
Accession Number: 20110630–5002.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3941–000.
Applicants: Granite Reliable Power, LLC.
Description: Granite Reliable Power, LLC submits tariff filing per 35.12: Granite MBR Petition to be effective 6/30/2011 under ER11–3941.
Filed Date: 06/30/2011.
Accession Number: 20110630–5004.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3942–000.
Applicants: Brookfield Energy Marketing LP.
Description: Brookfield Energy Marketing LP submits tariff filing per 35: Brookfield Energy Marketing LP Revised MBR Tariff to be effective 7/1/2011 under ER11–3942.
Filed Date: 06/30/2011.
Accession Number: 20110630–5021.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3943–000.
Applicants: New England Power Pool Participants Committee.
Description: New England Power Pool Participants Committee submits tariff filing per 35.13(a)(2)(iii: Jul 2011 Membership Filing to be effective 6/1/2011 under ER11–3943.
Filed Date: 06/30/2011.
Accession Number: 20110630–5046.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3945–000.
Applicants: Liberty Electric Power, LLC.
Description: Liberty Electric Power, LLC submits tariff filing per 35.15: Cancellation of Record ID to be effective 8/28/2010 under ER11–3945.
Filed Date: 06/30/2011.
Accession Number: 20110630–5056.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3946–000.
Applicants: CPV Liberty, LLC.
Description: CPV Liberty, LLC submits tariff filing per 35.15: Cancellation of Record ID to be effective 8/30/2010 under ER11–3946.
Filed Date: 06/30/2011.
Accession Number: 20110630–5057.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3947–000.
Applicants: The United Illuminating Company.
Description: The United Illuminating Company submits tariff filing per 35.13(a)(1): Notices of Termination and New Localized Costs Sharing Agreements to be effective 6/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5060.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3948–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023R1 Midwest Energy, Inc. NITSA NOA to be effective 6/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5061.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3949–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35: Compliance Filing Order No. 741—Credit NOPR to be effective 10/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5104.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3950–000.
Applicants: AES Laurel Mountain, LLC.
Description: AES Laurel Mountain, LLC submits tariff filing per 35: AES Laurel Mountain Compliance Filing to be effective 7/1/2011 under ER11–3950.
Filed Date: 06/30/2011.
Accession Number: 20110630–5106.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3951–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35: Compliance Filing Order No. 741—Credit NOPR—ISO Agreement to be effective 10/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5108.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3952–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2028R1 Sunflower Electric Power Corporation NITSA NOA to be effective 6/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5119.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3953–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: ISO New England Inc. submits tariff filing per 35: Rev. to ISO–NE's Tariff in Compliance with Order Nos 741 and 741–A to be effective 10/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5121.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3954–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits tariff filing per 35.13(a)(2)(iii: 2011–06–30_LEC County Line SS_605–SPS to be effective 7/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5139.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3955–000.
Applicants: Upper Peninsula Power Company.
Description: Upper Peninsula Power Company submits tariff filing per 35.13(a)(2)(iii: MAA between WPPI, City of Neguanee and UPPCO to be effective 9/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5142.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3956–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii: Original Service Agreement Nos. 2812 and 2813 to be effective 6/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5150.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3957–000.
Applicants: Consumers Energy Company.
Description: Consumers Energy Company submits tariff filing per 35.13(a)(2)(iii: Facilities Agreement with the Michigan Power Limited Partnership, Rate Schedule to be effective 8/29/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5151.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3958–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: Ministerial Filing In Support of Order 741 Compliance to be effective 10/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5152.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3959–000.
Applicants: Post Rock Wind Power Project, LLC
Description: Post Rock Wind Power Project, LLC submits tariff filing per 35.12: Initial Market-Based Rate Application to be effective 8/29/2011 under ER11–3959.
Filed Date: 06/30/2011.
Accession Number: 20110630–5153.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3960–000.
Applicants: J. Aron & Company.
Description: J. Aron & Company submits tariff filing per 35.37: J. Aron & Company 2nd Revised MBR to be effective 7/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5158.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3961–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits tariff filing per 35.13(a)(2)(iii: 2011–6–30_SPS CVEC–Tran-To-Load_648–SPS to be effective 7/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5183.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3962–000.
Applicants: City of Banning, California.
Description: City of Banning, California submits tariff filing per 35.13(a)(1): City of Banning, CA TO Tariff and TRR Revisions to be effective 7/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5186.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3963–000.
Applicants: Bruce Power Inc.
Description: Bruce Power Inc. submits tariff filing per 35.37: Bruce Power Inc. Triennial and First Revised MBR to be effective 7/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5194.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–3964–000.
Applicants: Duke Energy Fayette II, LLC.
Description: Duke Energy Fayette II, LLC submits tariff filing per 35.37: Triennial Filing to be effective 1/9/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5211.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–3965–000.
Applicants: Wisconsin River Power Company.
Description: Wisconsin River Power Company submits tariff filing per 35.13(a)(2)(iii: Combustion Turbine Power Purchase Contract to be effective 10/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5216.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3966–000.
Applicants: Duke Energy Hanging Rock II, LLC.
Description: Duke Energy Hanging Rock II, LLC submits tariff filing per 35.37: Triennial Filing to be effective 1/9/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5218.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–3967–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35: Order 741 Compliance Filing—Attachment X to be effective 10/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5220.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3968–000.
Applicants: Duke Energy Lee II, LLC.
Description: Duke Energy Lee II, LLC submits tariff filing per 35.37: Triennial Filing to be effective 1/9/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5222.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–3969–000.
Applicants: Duke Energy Washington II, LLC.
Description: Duke Energy Washington II, LLC submits tariff filing per 35.37: Triennial Filing to be effective 1/9/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5224.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–3970–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: Credit Reform Compliance Filing to be effective 10/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5226.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3971–000.
Applicants: Alcoa Power Generating Inc.
Description: Alcoa Power Generating Inc. submits tariff filing per 35.1: APGI—CRT Long Sault Transmission Service Agreement to be effective 7/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5228.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3972–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits tariff filing per 35: Compliance Filing per Order Nos. 741 and 741–A to be effective 10/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5229.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3973–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35: 2011–06–30 CAISO Credit Reforms Compliance Filing to be effective 10/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5230.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3974–000.
Applicants: Fowler Ridge III Wind Farm LLC.
Description: Fowler Ridge III Wind Farm LLC submits tariff filing per 35.13(a)(2)(iii: Fowler Ridge III Wind Farm LLC Tariff Update to be effective 8/29/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5238.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3975–000.
Applicants: Fowler Ridge II Wind Farm LLC.
Description: Fowler Ridge II Wind Farm LLC submits tariff filing per 35.13(a)(2)(iii: Fowler Ridge II Wind Farm LLC Tariff Update to be effective 8/29/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5240.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Any person desiring to intervene or to protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 1, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–17836 Filed 7–14–11; 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: ER10–1760–002; ER10–1758–002.

Applicants: Carolina Power & Light Company, Florida Power Corporation,

Description: Progress Companies submits its triennial market power update for their market-based rate authorizations.

Filed Date: 06/30/2011,

Accession Number: 20110706–0202,

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–3547–002.

Applicants: RG Steel Sparrows Point LLC.

Description: RG Steel Sparrows Point LLC submits tariff filing per 35.17(b): RG Steel MBRA ETariff adj to be effective 7/6/2011.

Filed Date: 07/06/2011.

Accession Number: 20110706–5001.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 27, 2011.

Docket Numbers: ER11–3607–001.

Applicants: AEP Texas North Company.

Description: AEP Texas North Company submits tariff filing per 35.17(b): TNC–PSO–ETT IA Refiling to be effective 5/19/2011.

Filed Date: 07/06/2011.

Accession Number: 20110706–5026.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 27, 2011.

Docket Numbers: ER11–4003–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA WDT SERV AG SCE–GPS 2510/2580 W. Walnut Ave Rialto Roof Top Solar Project to be effective 7/7/2011.

Filed Date: 07/06/2011.

Accession Number: 20110706–5039.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 27, 2011.

Docket Numbers: ER11–4004–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: LGIA Among NYISO, NYPA and Noble Clinton Windpark to be effective 6/20/2011.

Filed Date: 07/06/2011.

Accession Number: 20110706–5085.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 27, 2011.

Docket Numbers: ER11–4005–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: LGIA Among NYISO, NYPA and Noble Ellinburg to be effective 6/20/2011.

Filed Date: 07/06/2011.

Accession Number: 20110706–5094.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 27, 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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Dated: July 6, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–17838 Filed 7–14–11; 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 Numbers: RP11–2256–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, L.P. under New Docket. Measurement Variance/Fuel Use Factors utilized by Iroquois during the period January 1, 2011 through June 30, 2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5293.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 13, 2011.

Docket Numbers: RP11–2257–000.
Applicants: CenterPoint Energy Gas Transmission Company, LLC.
Description: CenterPoint Energy Gas Transmission Company, LLC submits tariff filing per 154.204: CEGT LLC—Negotiated Rate—July 2011—LER to be effective 7/6/2011.
Filed Date: 07/06/2011.
Accession Number: 20110706–5018.
Comment Date: 5 p.m. Eastern Time on Monday, July 18, 2011.

Docket Numbers: RP11–2258–000.
Applicants: PetroLogistics Natural Gas Storage, LLC.
Description: PetroLogistics Natural Gas Storage, LLC submits tariff filing per 154.204: Filing of Revised Tariff Records to be effective 8/5/2011.
Filed Date: 07/06/2011.
Accession Number: 20110706–5093.
Comment Date: 5 p.m. Eastern Time on Monday, July 18, 2011.

Docket Numbers: RP11–2259–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: Amendments to Negotiated Rates Agreement for Credit Provisions to be effective 4/4/2011.
Filed Date: 07/07/2011.
Accession Number: 20110707–5044.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 19, 2011.

Docket Numbers: RP11–2260–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Trailblazer Pipeline Company LLC submits tariff filing per 154.204: Negotiated Rate Filing (Name Change Williams to WPX) to be effective 8/7/2011.
Filed Date: 07/07/2011.
Accession Number: 20110707–5048.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 19, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Dated: July 7, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–17843 Filed 7–14–11; 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: ER11–3635–001.
Applicants: Hatch Solar Energy Center I, LLC.
Description: Hatch Solar Energy Center I, LLC submits tariff filing per 35.17(b): Amendment to Hatch Solar Energy Center I, LLC's MBR Tariff to be effective 5/26/2011.
Filed Date: 07/07/2011.
Accession Number: 20110707–5132.
Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2011.

Docket Numbers: ER11–4008–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits tariff filing per

35.13(a)(2)(iii: Rate Schedule 117 Base Line and Supplement 1 to be effective 9/7/2011.

Filed Date: 07/07/2011.

Accession Number: 20110707–5004.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2011.

Docket Numbers: ER11–4009–000.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits tariff filing per 35.13(a)(2)(iii: Non-Conforming Service Agreement 593, SGIA with Gordon Butte Wind, LLC to be effective 7/1/2011.

Filed Date: 07/07/2011.

Accession Number: 20110707–5120.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2011.

Docket Numbers: ER11–4010–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii: Non-Queued ISA; Original Service Agreement No. 2964 to be effective 6/9/2011.

Filed Date: 07/07/2011.

Accession Number: 20110707–5133.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2011.

Docket Numbers: ER11–4011–000.

Applicants: Black Hills Colorado IPP, LLC.

Description: Black Hills Colorado IPP, LLC submits tariff filing per 35.13(a)(2)(iii: Black Hills Colorado IPP, LLC, Revised Tariff to be effective 6/1/2011.

Filed Date: 07/07/2011.

Accession Number: 20110707–5135.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2011.

Docket Numbers: ER11–4012–000.

Applicants: Alabama Power Company.

Description: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Black Warrior—eTariff Viewer Section Title Correction Filing to be effective 1/1/2011.

Filed Date: 07/07/2011.

Accession Number: 20110707–5136.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2011.

Docket Numbers: ER11–4013–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii: Queue Position No. P–11—Original Service Agreement No. 2961 to be effective 6/15/2011.

Filed Date: 07/07/2011.

Accession Number: 20110707–5137.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–39–000.

Applicants: ISO New England Inc.

Description: Application of ISO New England Inc. under Section 204 of the Federal Power Act for an Order Authorizing Future Drawdowns.

Filed Date: 06/30/2011.

Accession Number: 20110630–5276.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA11–2–000.

Applicants: Indigo Generation, LLC, Larkspur Energy LLC, Wildflower Energy LP

Description: Notice of Site Acquisitions of Indigo Generation LLC, *et al.*

Filed Date: 07/07/2011.

Accession Number: 20110707–5087.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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Dated: July 8, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–17842 Filed 7–14–11; 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: ER11–3879–001.

Applicants: Amerigreen Energy, Inc.

Description: Amerigreen Energy, Inc. submits tariff filing per 35.17(b): Amendment to be effective 7/8/2011.

Filed Date: 07/08/2011.

Accession Number: 20110708–5074.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Docket Numbers: ER11–3979–001.

Applicants: PJM Interconnection, LLC, Midwest Independent Transmission System Operator, Inc.

Description: PJM Interconnection, LLC submits tariff filing per 35: Errata

to correct formatting in Compliance Filing in Docket No. ER11–3979–000 to be effective 6/16/2011.

Filed Date: 07/08/2011.

Accession Number: 20110708–5052.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Docket Numbers: ER11–4014–000.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc. submits tariff filing per 35.13(a)(2)(iii): Revision to OATT Section 4.2; Attach A, A–1 & B & N to be effective 10/1/2010.

Filed Date: 07/08/2011.

Accession Number: 20110708–5000.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Docket Numbers: ER11–4015–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): SGIA WDT SERV AG Advanced Solar 6121 Randolph St Roof Top Solar Project to be effective 7/11/2011.

Filed Date: 07/08/2011.

Accession Number: 20110708–5002.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Docket Numbers: ER11–4016–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits tariff filing per 35.13(a)(2)(iii): Service Agreement No. 268 under Carolina Power and Light Company OATT to be effective 7/1/2011.

Filed Date: 07/08/2011.

Accession Number: 20110708–5022.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Docket Numbers: ER11–4017–000.

Applicants: Midwest Independent Transmission System Operator, Inc., International Transmission Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): ITC–Harvest Windfarm SA 2352 Early Energy Agreement to be effective 9/8/2011.

Filed Date: 07/08/2011.

Accession Number: 20110708–5026.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Docket Numbers: ER11–4018–000.

Applicants: Midwest Independent Transmission System Operator, Inc., International Transmission Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): ITC–Harvest Windfarm SA 2353 Trial Ops Agmt to be effective 9/8/2011.

Filed Date: 07/08/2011.

Accession Number: 20110708–5027.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Docket Numbers: ER11–4019–000.

Applicants: Midwest Independent Transmission System Operator, Inc., International Transmission Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): ITC–Harvest SA 2372 ED&P Agmt to be effective 9/8/2011.

Filed Date: 07/08/2011.

Accession Number: 20110708–5030.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Docket Numbers: ER11–4020–000.

Applicants: Midwest Independent Transmission System Operator, Inc., International Transmission Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): ITC–MPPA Revenue Distr. Agr to be effective 9/8/2011.

Filed Date: 07/08/2011.

Accession Number: 20110708–5043.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Docket Numbers: ER11–4021–000.

Applicants: ISO New England Inc., The Connecticut Light and Power Company.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(i): Northeast Utilities Serv Co and ISO NE to be effective 8/30/2010.

Filed Date: 07/08/2011.

Accession Number: 20110708–5045.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Docket Numbers: ER11–4022–000.

Applicants: ISO New England Inc., The Connecticut Light and Power Company.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(i): Northeast Utilities Service Co and ISO NE to be effective 12/1/2010.

Filed Date: 07/08/2011.

Accession Number: 20110708–5046.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Docket Numbers: ER11–4023–000.

Applicants: ISO New England Inc., The Connecticut Light and Power Company.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(i): Northeast Utilities Serv Co and ISO NE to be effective 4/1/2011.

Filed Date: 07/08/2011.

Accession Number: 20110708–5047.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Docket Numbers: ER11–4024–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company submits tariff filing per 35.15: Tariff No. 17 Cancellation to be effective 6/30/2011.

Filed Date: 07/08/2011.

Accession Number: 20110708–5062.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Docket Numbers: ER11–4025–000.

Applicants: Louisville Gas and Electric Company.

Description: Louisville Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): 07/08/11 EKPC Amd NITS Jonesville to be effective 9/6/2011.

Filed Date: 07/08/2011.

Accession Number: 20110708–5077.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–37–000.

Applicants: Duquesne Light Company.

Description: Amendment to Application of Duquesne Light Company.

Filed Date: 07/08/2011.

Accession Number: 20110708–5086.

Comment Date: 5 p.m. Eastern Time on Monday, July 18, 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.

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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.

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Dated: July 8, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–17841 Filed 7–14–11; 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: ER91–569–049; ER10–1642–002; ER10–1541–001.

Applicants: Entergy Services, Inc.

Description: Entergy Affiliates submits their updated market power analysis to support the continued allowance of market-based rates.

Filed Date: 06/30/2011.

Accession Number: 20110706–0211.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–2780–001; ER10–2868–001; ER10–2853–001; ER10–2856–001; ER10–2872–001; ER10–2860–001.

Applicants: TransCanada Power Marketing Ltd.

Description: TransCanada Power Marketing Ltd *et al.* submit updated market power analysis supporting their continued authorization to sell power at market-based rates.

Filed Date: 06/30/2011.

Accession Number: 20110706–0201.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–3634–000; ER11–3634–001.

Applicants: KES Kingsburg, L.P.

Description: Amendment to Application of KES Kingsburg, L.P.

Filed Date: 07/06/2011.

Accession Number: 20110706–5130.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 27, 2011.

Docket Numbers: ER11–4006–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Original Service Agreement No. 2958 to be effective 6/7/2011.

Filed Date: 07/06/2011.

Accession Number: 20110706–5101.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 27, 2011.

Docket Numbers: ER11–4007–000.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits tariff filing per 35.13(a)(2)(iii: Revised Rate Schedule No. 188 (MT) Colstrip 1 & 2 Transmission Agreement to be effective 9/1/2011.

Filed Date: 07/06/2011.

Accession Number: 20110706–5118.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 27, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 7, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–17840 Filed 7–14–11; 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: ER10–2909–001; ER09–621–006; ER10–2906–001; ER10–2908–001; ER10–2911–001; ER10–2910–001; ER10–2900–001; ER10–2899–001; ER10–2898–001.
Applicants: Power Contract Financing II, Inc.
Description: Triennial MBR Update of Morgan Stanley Capital Group Inc., *et al.*
Filed Date: 06/30/2011.
Accession Number: 20110630–5295.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–3949–001.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35: Compliance Errata—Order 741 Credit NOPR to be effective 10/1/2011.
Filed Date: 07/05/2011.
Accession Number: 20110705–5033.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 26, 2011.

Docket Numbers: ER11–3999–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii: Original Service Agreement No. 2957 to be effective 6/1/2011.
Filed Date: 07/05/2011.
Accession Number: 20110705–5089.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 26, 2011.

Docket Numbers: ER11–4000–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii: 2011–07–05 2012 GMC Amendment to be effective 1/1/2012.
Filed Date: 07/05/2011.
Accession Number: 20110705–5101.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 26, 2011.

Docket Numbers: ER11–4001–000.
Applicants: Cleco Power LLC.
Description: Request for Cancellation of Cleco Power Service Agreement No. 61.
Filed Date: 07/01/2011.
Accession Number: 20110701–5307.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–4002–000.
Applicants: Tieton Hydropower, LLC.
Description: Tieton Hydropower, LLC Notice of Termination of Transmission Rate Sched #1.
Filed Date: 07/05/2011.
Accession Number: 20110705–5119.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 26, 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.

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Dated: July 06, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–17839 Filed 7–14–11; 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 corporate filings:

Docket Numbers: EC11–91–000.
Applicants: Mesquite Power, LLC.
Description: Mesquite Power, LLC Application pursuant to section 203 of the FPA for Authorization of Intracorporate Transfer of Jurisdictional Assets.
Filed Date: 07/01/2011.
Accession Number: 20110701–5299.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2278–001; ER10–2277–001; ER10–3203–001.
Applicants: Cogentrix Virginia Leasing Corporation, James River Cogeneration Company, J. Aron & Company.
Description: Updated Market Power Analysis and Request for Category 1 Seller Status Cogentrix Virginia Leasing Corporation, *et al.*
Filed Date: 06/30/2011.
Accession Number: 20110630–5308.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–2331–001; ER10–2343–001; ER10–2320–001; ER10–2322–002; ER10–2326–001; ER10–2327–002; ER10–2330–001.

Applicants: J.P. Morgan Ventures Energy Corporation, J.P. Morgan Commodities Canada Corporation, BE Alllegheny LLC, BE Ironwood LLC, Cedar Brakes I, LLC, Cedar Brakes II, LLC, Utility Contract Funding, LLC.

Description: Updated Market Power Analysis and Order 697 Compliance Filing of the JPMorgan Sellers for the Northeast Region.

Filed Date: 06/30/2011.

Accession Number: 20110630–5312.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–3576–001; ER97–3583–005; ER11–3401–002; ER10–3138–001.

Applicants: Golden Spread Electric Cooperative, Inc., GS Electric Generating Cooperative, Inc., Golden Spread Panhandle Wind Ranch, LLC, Denver City Energy Associates, L.P.

Description: Notice of Non-Material Change of Status of Golden Spread Electric Cooperative, Inc. *et al.*

Filed Date: 07/05/2011.

Accession Number: 20110705–5062.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 26, 2011.

Docket Numbers: ER11–3994–000.

Applicants: New York Independent System Operator, Inc.

Description: Notice of termination of Service Agreement 1586 of New York Independent System Operator, Inc.

Filed Date: 06/30/2011.

Accession Number: 20110630–5313.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3995–000.

Applicants: Cleco Power LLC.

Description: Request for Cancellation of Cleco Power LLC Service Agreement No. 101.

Filed Date: 07/01/2011.

Accession Number: 20110701–5304.

Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3996–000.

Applicants: Cleco Power LLC.

Description: Request for Cancellation of Cleco Power LLC Service Agreement No. 102.

Filed Date: 07/01/2011.

Accession Number: 20110701–5305.

Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3997–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii: Service Agreement Nos. 2955 and 2956 to be effective 6/2/2011.

Filed Date: 07/05/2011.

Accession Number: 20110705–5071.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 26, 2011.

Docket Numbers: ER11–3998–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company Request for Waiver of Tariff Provision.

Filed Date: 07/05/2011.

Accession Number: 20110705–5082.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 15, 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.

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Dated: July 5, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–17837 Filed 7–14–11; 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: ER10–1342–002, ER10–1343–002, ER10–1345–002, ER11–2534–001, ER10–2759–002, ER10–2631–002, ER10–2632–002.

Applicants: Rumford Power Inc., Bridgeport Energy, LLC, CP Energy Marketing (US) Inc., CPIDC, Inc., Tiverton Power Inc., Morris Cogeneration, LLC, CPI Energy Services (US) LLC.

Description: Triennial Market-Based Rate Update for the Northeast Region of CP Energy Marketing (US) Inc., *et. al.*

Filed Date: 06/30/2011.

Accession Number: 20110630–5283.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–1484–001.

Applicants: Shell Energy North America (U.S.), L.P.

Description: Updated Market Power Analysis for the Northeast Region of Shell Energy North America (U.S.), L.P.

Filed Date: 06/30/2011.

Accession Number: 20110630–5215.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–1511–002, ER10–1512–001, ER10–1714–002, ER10–2011–003.

Applicants: Kentucky Utilities Company, LG&E Energy Marketing Inc., Louisville Gas & Electric Company, PPL EnergyPlus, LLC.

Description: Triennial Market Power Update of Louisville Gas and Electric Company, *et. al.*

Filed Date: 06/30/2011.

Accession Number: 20110630–5213.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–1515–002.

Applicants: CPV Liberty, LLC.

Description: Market Power Update of CPV Liberty, LLC.

Filed Date: 06/30/2011.

Accession Number: 20110630–5265.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–1519–001.

Applicants: Liberty Electric Power, LLC.

Description: Market Power Update of Liberty Electric Power, LLC.

Filed Date: 06/30/2011.

Accession Number: 20110630–5266.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–1537–001, ER10–1553–001, ER10–1538–001, ER10–1539–001, ER10–1540–001, ER10–1531–001.

Applicants: Entergy Nuclear Generation Company, Entergy Nuclear Power Marketing, LLC, Entergy Nuclear Vermont Yankee, LLC, Entergy Nuclear Fitzpatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC.

Description: Triennial Market Update of Entergy Nuclear Fitzpatrick, LLC, *et. al.*

Filed Date: 06/30/2011.

Accession Number: 20110630–5269.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–1734–001.

Applicants: MXenergy Electric Inc.

Description: Updated Market Power Analysis for the Northeast Region of MXenergy Electric Inc.

Filed Date: 06/30/2011.

Accession Number: 20110630–5268.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–1760–001, ER10–1758–001.

Applicants: Carolina Power & Light Company d/b/a Pro, Florida Power Corporation.

Description: Change in Status filing of Carolina Power & Light Company and Florida Power Corporation.

Filed Date: 06/30/2011.

Accession Number: 20110630–5210.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER10–2172–003, ER10–2174–003, ER10–2176–003, ER10–2180–003, ER10–2178–003, ER10–2192–003, ER10–2184–003, ER10–2183–002, ER10–3308–003, ER10–2281–003, ER11–2383–002.

Applicants: Constellation Energy Commodities Group, Constellation Pwr Source Generation LLC, Constellation NewEnergy, Inc., CER Generation II, LLC, Safe Harbor Water Power Corporation, Baltimore Gas & Electric Company, Handsome Lake Energy, LLC, CER Generation, LLC, Constellation Energy Commodities Group M, Constellation Mystic Power, LLC, Criterion Power Partners, LLC.

Description: Notice of Non-Material Change in Status of Baltimore Gas and Electric Company, *et. al.*

Filed Date: 06/30/2011.

Accession Number: 20110630–5286.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER10–2179–004, ER10–2181–004, ER10–2182–004.

Applicants: R.E. Ginna Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC, Calvert Cliffs Nuclear Power Plant, LLC.

Description: Notice of Non-Material Change in Status of Calvert Cliffs Nuclear Power Plant, LLC, *et. al.*

Filed Date: 06/30/2011.

Accession Number: 20110630–5217.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER10–2197–001.

Applicants: Northern States Power Company, a Wisconsin Corporation.

Description: Northern States Power Company, a Wisconsin corporation submits tariff filing per 35: 20110330_Compliance Filing correcting baseline to be effective 8/11/2010 under ER10–2197–001 Filing Type: 80.

Filed Date: 03/30/2011.

Accession Number: 20110330–5065.

Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER10–2398–001, ER10–2399–001, ER10–2406–001, ER10–2408–001, ER10–2409–001, ER10–2410–001, ER10–2411–002, ER10–2412–002, ER10–2414–001, ER11–2935–001.

Applicants: High Trail Wind Farm, LLC, Old Trail Wind Farm, LLC, Marble River, LLC, Meadow Lake Wind Farm LLC, Meadow Lake Wind Farm II LLC, Blackstone Wind Farm LLC, Blackstone Wind Farm II LLC, Meadow Lake Wind Farm IV LLC, Meadow Lake Wind Farm III LLC, Paulding Wind Farm II LLC.

Description: Updated Market Power Analysis for the Northeast Region of Blackstone Wind Farm LLC, *et. al.*

Filed Date: 06/30/2011.

Accession Number: 20110630–5292.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–2432–001, ER10–2435–001, ER10–2440–001, ER10–2442–001, ER10–2443–001, ER10–2444–001, ER10–2446–001, ER10–2447–001, ER10–2449–001.

Applicants: York Generation Company LLC, Lowell Cogeneration Company Limited Part, Dartmouth Power Associates Limited Partn, Camden Plant Holding, LLC, Pedricktown Cogeneration Company LP, Elmwood Park Power LLC, Newark Bay Cogeneration Partnership, L.P., Power City Partners, L.P., Bayonne Plant Holding, LLC.

Description: Updated Market Power Analysis for the Northeast Region of Camden Plant Holding, LLC, *et. al.*

Filed Date: 06/30/2011.

Accession Number: 20110630–5282.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 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.

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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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Dated: July 1, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–17835 Filed 7–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–99–000.

Applicants: Granite Reliable Power, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Granite Reliable Power, LLC.

Filed Date: 06/30/2011.

Accession Number: 20110630–5043.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: EG11–100–000.

Applicants: Michigan Wind 2, LLC.

Description: Michigan Wind 2, LLC's Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 07/01/2011.

Accession Number: 20110701–5266.

Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–4281–024; ER99–2161–012; ER99–3000–011; ER00–2810–010; ER99–4359–009; ER99–4358–009; ER99–2168–012; ER09–1300–003; ER10–1291–002; ER09–1301–003; ER99–2162–012; ER00–2807–010; ER00–2809–010; ER99–4355–009; ER99–4356–009; ER00–3160–015; ER99–4357–009; ER00–3160–016; ER00–2313–011; ER02–2032–009; ER02–1396–009; ER02–1412–009; ER99–3637–010; ER99–1712–012; ER00–2808–011.

Applicants: Norwalk Power LLC, NRG Power Marketing LLC, Connecticut Jet Power LLC, Montville Power LLC, Middletown Power LLC, Somerset Power LLC, NRG Energy Center Dover LLC, Arthur Kill Power LLC, Dunkirk Power LLC, Huntley Power LLC, Conemaugh Power LLC, Indian River Power LLC, Keystone Power LLC, NRG Energy Center Paxton LLC, NRG Rockford LLC, NRG Rockford II LLC, Vienna Power LLC, Devon Power LLC, GenConn Middletown LLC, GenConn Devon LLC, GenConn Energy LLC, NRG New Jersey Energy Sales LLC, Oswego Harbor Power LLC, Astoria Gas Turbines Power LLC, NEO Freehold-Gen LLC.

Description: NRG Northeast MBR Entities Updated Market Power Analysis under ER97–4281, *et al.*

Filed Date: 06/30/2011.

Accession Number: 20110630–5291.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–1838–001; ER10–1915–001; ER10–1854–001; ER10–1857–001; ER10–1899–001; ER10–1900–001; ER10–1902–001; ER10–1903–001; ER10–1932–001; ER10–1935–001; ER10–1949–001; ER10–1963–001; ER10–1967–001; ER10–1968–001; ER10–1971–002; ER10–1973–001; ER10–1951–002; ER10–1975–004; ER10–1974–004; ER11–2365–002; ER10–1986–001; ER10–1990–001; ER10–1993–001;

Applicants: Backbone Mountain Windpower, LLC, Baywater Peaking Facility, LLC, Doswell Limited Partnership, FPL Energy Cape, LLC, FPL Energy Illinois Wind, LLC, FPL Energy Maine Hydro, LLC, FPL Energy Marcus Hook, L.P., FPL Energy MH50, LP, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, FPLE Rhode Island State Energy, L.P., Jamaica Bay Peaking Facility, LLC, Meyerdale Windpower, LLC, Mill Run Windpower, LLC, Nextra Energy Power Marketing, LLC, Nextra Energy Seabrook, LLC, Nextra Energy Services Massachusetts, LLC, North Jersey Energy Associates, Northeast Energy Associates, L.P., Paradise Solar Urban Renewal, LLC, Pennsylvania Windfarms, Inc., Somerset Windpower, LLC, Waymart Wind Farm, L.P.

Description: NextEra Energy Companies' Northeast Triennial Market Power Update.

Filed Date: 07/01/2011.

Accession Number: 20110701–5237.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: ER10–1944–001; ER10–2051–002; ER10–1942–003; ER10–2042–004; ER10–2043–002; ER10–2029–004; ER10–2041–002; ER10–2040–002; ER10–2039–002; ER10–2037–002; ER10–2036–002; ER10–1898–001; ER10–1934–001; ER10–1893–001; ER10–1889–001; ER10–1895–001; ER10–1870–001; ER10–1858–001; ER10–2044–002.

Applicants: Calpine Energy Services, L.P., Bethpage Energy Center 3, LLC, Calpine Construction Finance Company, LP, CES Marketing V, L.P., CES Marketing X, LLC, Zion Energy LLC, Calpine Philadelphia Inc., CPN Bethpage 3rd Turbine, Inc., KIAC Partners, Nissequogue Cogen Partners, TBG Cogen Partners, CES Marketing IX, LLC, Calpine Mid-Atlantic Marketing, LLC, Calpine Bethlehem, LLC, Calpine Mid-Atlantic Generation, LLC, Calpine Mid Merit, LLC, Calpine New Jersey Generation, LLC, Calpine Vineland Solar, LLC, Calpine Newark, LLC.

Description: Updated Market Power Analysis of Bethpage Energy Center 3, LLC, *et al.*

Filed Date: 06/30/2011.

Accession Number: 20110630–5298.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–2566–001.

Applicants: Duke Energy Carolinas, LLC.

Description: Updated market analysis in Southeast Region of Duke Energy Carolinas, LLC.

Filed Date: 07/01/2011.

Accession Number: 20110701–5069.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: ER11–2547–003.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35: NYISO notification of 15 minute variable scheduling at HQ Chateauguay interface to be effective 7/27/2011.

Filed Date: 07/01/2011.

Accession Number: 20110701–5085.

Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER10–2881–002; ER10–2882–002; ER10–2883–002;

ER10–2884–002; ER10–2885–002; ER10–2641–002; ER10–2663–002; ER10–2886–002;

Applicants: Alabama Power Company, Southern Power Company, Mississippi Power Company, Georgia Power Company, Gulf Power Company, Oleander Power Project, Limited Partnership, Southern Company—Florida LLC, Southern Turner Cimarron I, LLC.

Description: Updated Market Power Analysis of Southern Companies and their affiliates for the Southeast Region under ER10–2881, *et al.*

Filed Date: 06/30/2011.

Accession Number: 20110630–5094.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–2895–001.

Applicants: Bear Swamp Power Company LLC.

Description: Bear Swamp Power Company LLC submits tariff filing per 35: Bear Swamp Power Company LLC Revised MBR Tariff to be effective 7/1/2011.

Filed Date: 06/30/2011.

Accession Number: 20110630–5019.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER10–2895–002; ER10–2901–001; ER10–1427–001; ER10–2902–002; ER10–2917–002; ER10–2919–001; ER10–2918–003; ER10–2920–002; ER10–2921–002; ER10–2922–002; ER10–2966–002.

Applicants: Bear Swamp Power Company LLC, Brookfield Energy Marketing, Inc., Brookfield Energy Marketing, LP, Brookfield Energy Marketing US LLC, Brookfield Power Piney & Deep Creek LLC, Brookfield Renewable Energy Marketing, US LLC, Carr Street Generating Stations, L.P., Erie Boulevard Hydropower, L.P., Great Lakes Hydro America, LLC, Hawks Nest Hydro, LLC, Rumford Falls Hydro LLC.

Description: Bear Swamp Power Company, *et al.* Market Power Update.

Filed Date: 06/30/2011.

Accession Number: 20110630–5296.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–2917–001.

Applicants: Brookfield Power Piney & Deep Creek LLC.

Description: Brookfield Power Piney & Deep Creek LLC submits tariff filing per 35: Brookfield Power Pine & Deep Creek LLC Revised Market-Based Rate Tariff to be effective 7/1/2011.

Filed Date: 06/30/2011.

Accession Number: 20110630–5023.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER10–2918–002.

Applicants: Carr Street Generating Station, L.P.

Description: Carr Street Generating Station, L.P. submits tariff filing per 35: Carr Street Generating Station, L.P. Revised MBR Tariff to be effective 7/1/2011.

Filed Date: 06/30/2011.

Accession Number: 20110630–5093.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER10–2920–001.

Applicants: Erie Boulevard Hydropower, L.P.

Description: Erie Boulevard Hydropower, L.P. submits tariff filing per 35: Erie Boulevard Hydropower, L.P. Revised MBR Tariff to be effective 7/1/2011.

Filed Date: 06/30/2011.

Accession Number: 20110630–5028.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER10–2921–001.

Applicants: Great Lakes Hydro America, LLC.

Description: Great Lakes Hydro America, LLC submits tariff filing per 35: Great Lakes Hydro America, LLC Revised MBR Tariff to be effective 7/1/2011.

Filed Date: 06/30/2011.

Accession Number: 20110630–5031.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER10–2922–001.

Applicants: Hawks Nest Hydro LLC.

Description: Hawks Nest Hydro LLC submits tariff filing per 35: Hawks Nest Hydro LLC Revised MBR Tariff to be effective 7/1/2011.

Filed Date: 06/30/2011.

Accession Number: 20110630–5040.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER10–2952–002; ER10–2955–002.

Applicants: Flat Rock Windpower II LLC, Flat Rock Windpower LLC

Description: Supplement to Updated Market Power Analysis of Flat Rock Windpower LLC and Flat Rock Windpower II LLC.

Filed Date: 06/30/2011.

Accession Number: 20110630–5301.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–2966–001.

Applicants: Rumford Falls Hydro LLC.

Description: Rumford Falls Hydro LLC submits tariff filing per 35: Rumford Falls Hydro LLC Revised MBR Tariff to be effective 7/1/2011.

Filed Date: 06/30/2011.

Accession Number: 20110630–5042.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER10–2985–001; ER10–3049–002; ER10–3051–002.

Applicants: Champion Energy Marketing, LLC, Champion Energy Services, LLC, Champion Energy, LLC.

Description: Updated Market Power Analysis for the Northeast Region of Champion Energy Marketing, LLC, *et. al.*

Filed Date: 06/30/2011.

Accession Number: 20110630–5306.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER10–3195–001; *ER10–3194–001.*

Applicants: MATEP LLC; MATEP Limited Partnership.

Description: Updated Market Power Analysis for the Northeast Region of MATEP Limited Partnership.

Filed Date: 06/30/2011.

Accession Number: 20110630–5294.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–2079–001; ER11–2064–001; ER11–2065–001; ER11–2066–001; ER10–1330–001.

Applicants: Duke Energy Washington II, LLC, Duke Energy Fayette II, LLC, Duke Energy Hanging Rock II, LLC, Duke Energy Lee II, LLC, North Allegheny Wind, LLC.

Description: Triennial of North Allegheny Wind, LLC.

Filed Date: 06/30/2011.

Accession Number: 20110630–5277.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–2292–001.

Applicants: Brookfield Energy Marketing Inc.

Description: Brookfield Energy Marketing Inc. submits tariff filing per 35: Brookfield Energy Marketing Inc. Revised MBR Tariff to be effective 7/1/2011.

Filed Date: 06/30/2011.

Accession Number: 20110630–5020.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–2293–001.

Applicants: Brookfield Energy Marketing US LLC.

Description: Brookfield Energy Marketing US LLC submits tariff filing per 35: Brookfield Energy Marketing US LLC Revised Market-Based Rate Tariff to be effective 7/1/2011.

Filed Date: 06/30/2011.

Accession Number: 20110630–5022.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–2294–001.

Applicants: Brookfield Renewable Energy Marketing U.S.

Description: Brookfield Renewable Energy Marketing U.S. LLC submits tariff filing per 35: Brookfield Renewable Energy Marketing U.S. LLC Revised MBR Tariff to be effective 7/1/2011.

Filed Date: 06/30/2011.
Accession Number: 20110630–5024.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–2604–002.
Applicants: Commonwealth Chesapeake Company LLC.
Description: Commonwealth Chesapeake Company LLC submits tariff filing per 35: Request for Category 1 Seller Determination in the Northeast region to be effective 8/29/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5064.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–2605–002.
Applicants: Tyr Energy LLC.
Description: Tyr Energy LLC submits tariff filing per 35: Request for Category 1 Seller Determination in the Northeast region to be effective 8/29/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5062.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–2701–001.
Applicants: Mountain View Power Partners IV, LLC.
Description: Mountain View Power Partners IV, LLC submits tariff filing per 35: Mountain View Power Partners IV, LLC Compliance Filing to be effective 7/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5107.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–2814–001.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, LLC.
Description: American Transmission Systems, Incorporated submits tariff filing per 35: ATSI submits compliance filing in Docket Nos. ER11–2814 and ER11–2815 to be effective N/A.
Filed Date: 06/30/2011.
Accession Number: 20110630–5118.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–2815–002.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, LLC.
Description: American Transmission Systems, Incorporated submits tariff filing per 35: ATSI submits compliance filing in Docket Nos. ER11–2814 and ER11–2815 to be effective 6/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5120.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3262–002.
Applicants: Trans Bay Cable LLC.
Description: Trans Bay Cable LLC submits tariff filing per 35: Compliance to be effective 6/30/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5051.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3279–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 06–30–11 Schedule 37 and Attachment GG compliance to be effective 6/1/2011.
Filed Date: 06/30/2011.
Accession Number: 20110630–5161.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Docket Numbers: ER11–3808–001.
Applicants: ORNI 39, LLC.
Description: ORNI 39, LLC submits tariff filing per 35.17(b): Amendment to Petition to be effective 8/1/2011 under ER11–3808.
Filed Date: 07/01/2011.
Accession Number: 20110701–5075.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3876–001; ER11–2044–002; ER10–2611–001.
Applicants: MidAmerican Energy Company, Cordova Energy Company LLC, Saranac Power Partners, L.P.
Description: Updated market power analysis for Northeast Region of Cordova Energy Company LLC, *et al.*
Filed Date: 06/30/2011.
Accession Number: 20110630–5287.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: ER11–3978–000.
Applicants: PPL EnergyPlus, LLC.
Description: PPL EnergyPlus, LLC submits tariff filing per 35.1: Transmission Reassignment Tariff to be effective 7/1/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5049.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3979–000.
Applicants: PJM Interconnection, LLC, Midwest Independent Transmission System Operator Inc.
Description: PJM Interconnection, LLC submits tariff filing per 35: Compliance filing per Settlement Order in Docket Nos. EL10–45, EL10–46 & EL10–60 to be effective 6/16/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5059.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3980–000.
Applicants: ORNI 14.
Description: ORNI 14 submits tariff filing per 35.12: Petition of ORNI 14 LLC For Approval of Initial Market-Based Rate Tariff to be effective 7/2/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5062.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3981–000.
Applicants: Acadia Power Partners, LLC.
Description: Acadia Power Partners, LLC submits tariff filing per 35.15: Cancellation of Acadia MBR to be effective 7/1/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5072.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3982–000.
Applicants: Cleco Power LLC.
Description: Cleco Power LLC submits tariff filing per 35.15: Cancellation of RS21 Acadia IA to be effective 7/1/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5074.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3983–000.
Applicants: Deseret Generation & Transmission Co-operative, Inc.
Description: Deseret Generation & Transmission Co-operative, Inc. submits tariff filing per 35: 2011 RIA Annual Update to be effective 1/1/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5126.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3984–000.
Applicants: City of Riverside, California.
Description: City of Riverside, California submits tariff filing per 35.13(a)(1): City of Riverside, CA TO Tariff and TRR Revisions to be effective 8/1/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5203.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3985–000.
Applicants: UniSource Energy Development Company.
Description: Notification of Cancellation of Tolling Agreement of UniSource Energy Development.
Filed Date: 07/01/2011.
Accession Number: 20110701–5234.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3986–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 1765R4 KCP&L–GMO NITSA NOAS to be effective 6/1/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5236.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3987–000.
Applicants: Mesquite Solar 1, LLC.
Description: Mesquite Solar 1, LLC submits tariff filing per 35.12: Mesquite Solar 1, LLC FERC Electric Tariff No. 1 Market-Based Rates Tariff to be effective 7/1/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5245.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3988–000.
Applicants: CES Placerita, Incorporated.
Description: CES Placerita, Incorporated submits tariff filing per 35: Notice of Succession Revised to be effective 3/24/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5246.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3989–000.
Applicants: Michigan Wind 2, LLC.
Description: Michigan Wind 2, LLC submits tariff filing per 35.12: Application for Market-Based Rate Authorization to be effective 9/1/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5256.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3990–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii: USBR–WAPA Weber Basin Project Agreement to be effective 6/10/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5262.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3991–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, LLC.
Description: American Transmission Systems, Incorporated submits tariff filing per 35.13(a)(2)(iii: FirstEnergy submits Service Agreement Nos. 2814, 2815 & 2818 re ASTI Integration to be effective 6/1/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5269.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3992–000.
Applicants: L&P Electric, Inc.
Description: L &P Electric, Inc. submits tariff filing per 35.12: Leggatt & Platt Electric MBRA Application to be effective 8/1/2011.
Filed Date: 07/01/2011.
Accession Number: 20110701–5270.
Comment Date: 5 p.m. Eastern Time on Friday, July 22, 2011.

Docket Numbers: ER11–3993–000.
Applicants: ALLETE, Inc.
Description: Notices of Termination of ALLETE, Inc.
Filed Date: 06/30/2011.
Accession Number: 20110630–5300.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH11–17–000.
Applicants: Fort Detrick Cogen Partners, LLC.
Description: Form FERC–65B Waiver Notification of Fort Detrick Cogen Partners, LLC.
Filed Date: 06/30/2011.
Accession Number: 20110630–5307.
Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 5, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–17833 Filed 7–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–481–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Alden Gas Storage Field Expansion Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Alden Gas Storage Field Expansion Project, involving the expansion of the certificated boundary and buffer zone of the existing Alden Gas Storage Field by Southern Star Central Gas Pipeline, Inc. (Southern Star) in Rice County, Kansas. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission

will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on August 8, 2011. Further details on how to submit written comments are provided in the Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this project and encourage them to comment on their areas of concern.

If you are a landowner or owner of mineral rights receiving this notice, you may be contacted by a storage company representative about the acquisition of mineral rights and an easement to convert, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if negotiations to obtain an easement or mineral rights fail to produce an agreement, the company could initiate condemnation proceedings where compensation would be determined in accordance with state or federal law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Southern Star provided to landowners and owners of mineral rights. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Southern Star requests authorization to expand its existing certificated boundary and buffer zone of its existing Alden Gas Storage Field located in Rice County, Kansas to ensure the field's integrity and protection. The certified storage boundary/buffer currently encompasses 3,540 acres and operates with a maximum storage capacity of 14.7 billion cubic feet (Bcf) with a working capacity of 4.2 Bcf. Southern Star proposes to expand the storage field boundary and buffer zone by an additional 1,592 acres and convert one active oil/gas production well within the planned expansion acreage, called the Rama Wellman No. 1 Well, into a pressure observation well. Southern Star states that converting the Rama Wellman No. 1 Well is required because this well is currently producing gas from its storage formation, known as the Misener Sandstone. Southern Star would also remove existing tank battery facilities dedicated to the production well. Southern Star's proposal would not change the current operational parameters or capabilities of the storage field.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 0.9 acre of land for the temporary workspaces to convert the production well to an observation well and to remove tank battery facilities. Following construction, about 0.3 acre would be maintained for permanent operation of the observation well; the remaining acreage would be restored and allowed to revert to former uses. A permanent access road is also needed for access to the observation well.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA, we will discuss impacts that could occur as a result of the removal, conversion, and operation of those facilities related to the proposed expansion of the storage field boundary and buffer zone under these general headings:

- geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species; and
- public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Kansas State Historic Preservation Office (SHPO), and to solicit its views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards,

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36 of the Code of Federal Regulations, part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. 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 timely and properly recorded, please send them so that they will be received in Washington, DC, on or before August 8, 2011.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP11–481–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling 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.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property or mineral rights may be used permanently or temporarily for project purposes, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

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 at *http://www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP11–481). 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*.

Any public meetings or additional site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: July 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–17748 Filed 7–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–12–001]

Increasing Market and Planning Efficiency Through Improved Software; Notice Establishing Date for Comments

From June 28–30, 2011, Commission staff convened a technical conference to discuss opportunities for increasing real-time and day-ahead market efficiency through improved software.[1]

Parties wishing to submit written comments regarding the matters discussed at the technical conference should submit their comments in Docket No. AD10–12–001 on or before July 22, 2011.

Dated: July 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–17749 Filed 7–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12718–002]

Natural Currents Energy Services, LLC; Notice of Intent To File License Application, Filing of Draft Application, Request for Waivers of Integrated Licensing Process Regulations Necessary for Expedited Processing of a Hydrokinetic Pilot Project License Application, and Soliciting Comments

a. *Type of Filing:* Notice of Intent To File a License Application for an Original License for a Hydrokinetic Pilot Project.

[1] Notice of technical conference: increasing real-time and day-ahead market efficiency through improved software, 76 Fed. Reg. 28,022 (2011).

b. *Project No.:* 12718–002.

c. *Date Filed:* June 28, 2011.

d. *Submitted By:* Natural Currents Energy Services, LLC (Natural Currents).

e. *Name of Project:* Wards Island Tidal Energy Project.

f. *Location:* Off the south shore of Wards Island, in the Hell Gate Waterway near the junction of the Harlem River, East River, and Long Island Sound in New York City, NY.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Roger Bason, President, Natural Currents Energy Services, LLC, 24 Roxanne Blvd, Highland, NY 12528; (845) 691–4008.

i. *FERC Contact:* Emily Carter at (202) 502–6512 or e-mail at *emily.carter@ferc.gov.*

j. *Natural Currents has filed with the Commission:* (1) A notice of intent (NOI) to file an application for an original license for a hydrokinetic pilot project and a draft license application with monitoring plans; (2) a request for waivers of the integrated licensing process regulations necessary for expedited processing of a hydrokinetic pilot project license application; (3) a proposed process plan and schedule; (4) a request to be designated as the non-federal representative for section 7 of the Endangered Species Act (ESA) consultation; and (5) a request to be designated as the non-federal representative for section 106 consultation under the National Historic Preservation Act (collectively the pre-filing materials).

k. With this notice, we are soliciting comments on the pre-filing materials listed in paragraph j above, including the draft license application and monitoring plans. All comments should be sent to the address above in paragraph h. In addition, all comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Any individual or entity interested in submitting comments on the pre-filing materials must do so by September 6, 2011.

l. With this notice, we are approving Natural Current's request to be designated as the non-federal representative for section 7 of the ESA and its request to initiate consultation under section 106 of the National Historic Preservation Act; and recommending that it begin informal consultation with: (a) the U.S. Fish and Wildlife Service and the National Marine Fisheries Service as required by section 7 of ESA; and (b) the New York State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

m. With this notice, we also are asking federal, state, local, and tribal agencies with jurisdiction and/or expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph ''k'' above.

n. This notice does not constitute the Commission's approval of Natural Current's request to use the Pilot Project Licensing Procedures. Upon its review of the project's overall characteristics relative to the pilot project criteria, the draft license application contents, and any comments filed, the Commission will determine whether there is adequate information to conclude the pre-filing process.

o. The proposed Wards Island Tidal Energy Project would consist of: (1) A 15-meter-long, 1.6-meter-diameter, vessel mounted 150-kW Natural Currents Sea Dragon Tidal Turbine; (2) a vessel-based deployment Principal Project Works or Structural Support system; (3) six 40-foot-long steel support pilings; (3) a 50-meter-long subsea transmission line connecting to an electrical cabinet owned by the New York City Parks; and (4) appurtenant facilities. The hydrokinetic project would have an estimated average annual generation of 350,400 kilowatt hours per year.

p. A copy of the draft license application and all pre-filing materials are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number (12718), excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659.

q. Pre-filing process schedule. The pre-filing process will be conducted pursuant to the following tentative schedule. Revisions to the schedule below may be made based on staff's review of the draft application and any comments received.

Milestone	Date
Comments on pre-filing materials due.	September 6, 2011.
Issuance of meeting notice (if needed).	September 21, 2011.
Public meeting/technical conference (if needed).	October 21, 2011.

r. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: July 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–17747 Filed 7–14–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8997–9)

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 07/04/2011 Through 07/08/2011

Pursuant to 40 CFR 1506.9.

Notice: In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the Federal Register. Since February 2008, EPA has included its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement

to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20110217, Draft EIS, NOAA, 00, 2011 Caribbean Comprehensive Annual Catch Limit (ACL) Amendment for the US Caribbean: Amendment 6 to the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands; Amendment 5 to the Fishery Management Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands; Amendment 3 to the Fishery Management Plan for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands; Amendment 3 to the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands, Comment Period Ends: 08/29/2011, Contact: Roy E. Crabtree, PhD 727–824–5305.

EIS No. 20110218, Final EIS, BPA, 00, Big Eddy-Knight Transmission Project, Proposal to Construct, Operate, and Maintain a 27–28 mile long 500-Kilovolt Transmission Line using a Combination of Existing BPA and New 150-Foot wide Right-of-Way, Wasco County, OR and Klickitat County, WA, Wait Period Ends: 08/15/2011, Contact: Stacy Mason 503–230–5455.

EIS No. 20110219, Final EIS, FTA, WA, East Link Rail Transit Project, New and Update Information, Proposes to Construct and Operate an Extension of the Light Rail System from downtown Seattle to Mercer Island, Bellevue, and Redmond via Interstate 90, Funding and US Army COE Section 404 and 10 Permits, Seattle, WA, Wait Period Ends: 08/15/2011, Contact: John Witmer 206–220–7950.

EIS No. 20110220, Final EIS, TVA, 00, Natural Resource Plan, To Determine How TVA Will Manage It Natural Resource Over the Next 20 Year, Implementation, AL, GA, KY, MS, NC, TN and VA, Wait Period Ends: 08/15/2011, Contact: Charles P. Nicholson 865–632–3582.

EIS No. 20110221, Final EIS, NOAA, WA, Clark Springs Water Supply Habitat Conservation Plan, Application for Incidental Take Permits, City of Kent, Maple Valley, King County, WA, Wait Period Ends: 08/15/2011, Contact: Kelly Peterson 253–856–5547.

EIS No. 20110222, Final EIS, HUD, CA, West Coast Recycling Group Metal Recycling Facility Project, Proposal to Develop and Operate a Scrap Metal Shredding and Recycling Facility at the Port of West Sacramento, Yolo County,CA, Wait Period Ends: 08/15/2011, Contact: David Tilley 916–617–4645.

EIS No. 20110223, Second Final Supplement, FHWA, WA, Alaskan Way Viaduct Replacement Project, Between S. Royal Brougham Way and Roy Street, To Protect Public Safety and Provide Essential Vehicle Capacity to and through downtown Seattle, Updated Information to 2004 DEIS and 2006 DSEIS, Seattle, WA, Wait Period Ends: 08/15/2011, Contact: Angela Angove 206–805–2832.

EIS No. 20110224, Draft EIS, FWS, TX, Habitat Conservation Plan for Oncor Electric Delivery Facilities, Application for Incidental Take Permit for 11 Federally List Species in 100 Texas Counties, Comment Period Ends: 09/28/2011, Contact: Adam Zerrenner 512–490–0057.

Dated: July 12, 2011.

Cliff Rader,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–17865 Filed 7–14–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 15, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Sections 15.713, 15.714, 15.715 and 15.717, TV White Space Broadcast Bands.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit.

Number of Respondents: 2,000 respondents; 2,000 responses.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping

requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 154(i), 302, 303(c), 303(f), and 307.

Total Annual Burden: 4,000 hours.

Total Annual Cost: $100,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. Respondents may request that portions of their information remain confidential in accordance with 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this comment period in order to obtain the full three year clearance from them. The Commission is reporting a program change increase of 4,000 total annual burden hours and an increase of $100,000 in annual costs.

On November 14, 2008, the Commission adopted a Second Report and Order and Memorandum Opinion and Order, FCC 08–260, ET Docket No. 04–186 that established rules to allow new and unlicensed wireless devices to operate in the broadcast television spectrum at locations where that spectrum is not being used by licensed services (this unused TV spectrum is often termed television ''white spaces''). The rules will allow for the use of unlicensed TV band devices in the unused spectrum to provide broadband data and other services for consumers and businesses.

Subsequently on September 23, 2010, the Commission adopted a Second Memorandum Opinion and Order finalizing the rules to make the unused spectrum in the TV bands available for unlicensed broadband wireless devices. This action resolved on reconsideration certain legal and technical issues in order to provide certainty concerning the rules for operation of unlicensed transmitting devices in the television broadcast frequency bands (unlicensed TV bands devices or ''TVBDs''). Resolution of these issues will now allow manufacturers to begin marketing unlicensed communications devices and systems that operate on frequencies in the TV bands in areas where they are not used by licensed services (''TV white spaces'').

In the Second Report and Order the Commission decided to designate one or more database administrator from the private sector to create and operate TV band databases. The TV band database administrators will act on behalf of the FCC, but will offer a privately owned and operated service. Each database administrator will be responsible for operation of their database and coordination of the overall functioning of the database with other administrators, and will provide database access to TVBDs.

The Commission also decided that operators of venues using unlicensed wireless microphones will be required to register their sites with the Commission which will transmit the information to the database administrators. The registration request must be filed at least 30 days in advance and the requests will be made public to provide an opportunity for public comment or objections.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–17891 Filed 7–14–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 15, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1080.

Title: Improving Public Safety Communications in the 800 MHz Band.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 1,510 respondents; 4,056 responses.

Estimated Time per Response: 1 hour to 10 hours.

Frequency of Response: On occasion and quarterly reporting requirements and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 160,

251–254, 303 and 332 unless otherwise noted.

Total Annual Burden: 16,941 hours.

Total Annual Cost: $37,600.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting OMB approval for an extension of this information collection.

The Commission has taken actions to immediately stem increasing instances of interference to 800 MHz public safety communications systems as well as address the underlying cause of 800 MHz interference. The PRA burden involves the exchange of information to facilitate incumbent relocation. This information exchange is necessary to effectuate band reconfiguration, i.e., to spectrally separate incompatible technologies, which is the underlying cause of interference to public safety. Overall the PRA burden is necessary to enable the Commission to determine the parties are acting in good faith resolving the 800 MHz public safety interference problem and to keep the 800 MHz transition moving efficiently.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–17892 Filed 7–14–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011426–051.

Title: West Coast of South America Discussion Agreement.

Parties: APL Co. Pte Ltd.; Compania Chilena de Navigacion Interoceanica, S.A.; Compania Sud Americana de Vapores, S.A.; Frontier Liner Services, Inc.; Hamburg-Süd; Interocean Lines, Inc.; King Ocean Services Limited, Inc.; Mediterranean Shipping Company, SA; Seaboard Marine Ltd.; South Pacific Shipping Company, Ltd. (dba Ecuadorian Line); and Trinity Shipping Line.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1627 I Street, NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment deletes A.P. Moller-Maersk A/S as a party to the agreement.

Agreement No.: 011814–005.

Title: HSDG/King Ocean Space Charter Agreement.

Parties: Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft KG; King Ocean Services Limited; and King Ocean Service de Venezuela, S.A.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment revises the size of vessels to be deployed and the amount of space to be chartered, deletes obsolete language, corrects the address of Hamburg Sud, and removes King Ocean Service de Venezuela, S.A. as a participant.

Agreement No.: 012064–001.

Title: Hapag-Lloyd/NYK Mexico-Dominican Republic Slot Exchange Agreement.

Parties: Hapag-Lloyd AG and Nippon Yusen Kaisha.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment would add Brazil to the geographic scope of the Agreement and revise the amount of space to be exchanged.

By Order of the Federal Maritime Commission.

Dated: July 1, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–17906 Filed 7–12–11; 4:15 pm]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 1, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Paul L. Martin and Pamela J. Martin,* both of Bradenton, Florida; to acquire additional voting shares of Evans Bancshares, Inc., Evansdale, Iowa, and thereby indirectly acquire additional voting shares of Fist Security State Bank, Evansdale, Iowa.

Board of Governors of the Federal Reserve System, July 12, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–17879 Filed 7–14–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the

standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 11, 2011.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *BCSB Bancorp, Inc.,* Baltimore, Maryland, to become a bank holding company by acquiring 100 percent of the voting shares of Baltimore County Savings Bank Federal Savings Bank, Baltimore, Maryland, upon its conversion to a state-chartered commercial bank.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Riverview Bancorp, Inc.,* Vancouver, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Riverview Community Bank FSB, Vancouver, Washington.

Board of Governors of the Federal Reserve System, July 12, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–17878 Filed 7–14–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED

[June 1, 2011 thru June 30, 2011]

ET date	Trans. No.	ET req status	Party name
06/01/2011	20110899	G	Station Holdeo LLC; Green Valley Ranch Gaming, LLC; Station Holdco LLC.
	20110912	G	Harvest Partners V, L.P.; Blue Point Capital Partners II, L.P.; Harvest Partners V, L.P.
	20110916	G	DMWSL 668 Limited; Bridgepoint Capital Nominees Limited; DMWSL 668 Limited.
06/02/2011	20110890	G	AMEC plc; MACTEC, Inc.; AMEC plc.
	20110896	G	National Instruments Corporation; AWR Corporation; National Instruments Corporation.
06/03/2011	20110823	G	VSE Corporation; Joan Wheeler; VSE Corporation.
	20110900	G	EMCOR Group, Inc.; Transfield Services Limited; EMCOR Group, Inc.
06/06/2011	20110904	G	MCMC Holdings, LLC; Steven M. Mariano; MCMC Holdings, LLC.
	20110911	G	Nuance Communications, Inc.; Equitrac Corporation; Nuance Communications, Inc.
	20110913	G	Genstar Capital Partners V, L.P.; Brockway Moran & Partners Fund II, L.P.; Genstar Capital Partners V, L.P.
	20110919	G	Thomas H. Lee Equity Fund VI, L.P.; JLL Partners Fund VI, L.P.; Thomas H. Lee Equity Fund VI, L.P.
	20110920	G	Spectra Energy Corp.; EQT Corporation; Spectra Energy Corp.
	20110922	G	Symantec Corporation; Clearwell Systems, Inc.; Symantec Corporation.
	20110925	G	Exterran Partners, L.P.; Exterran Holdings, Inc.; Exterran Partners, L.P.
	20110929	G	Fila Korea Ltd.; Fortune Brands, Inc.; Fila Korea Ltd.
	20110930	G	KOFC Miraeasset Growth Champ 2010–4 Private Equity Fund; Fortune Brands, Inc.; KOFC Miraeasset Growth Champ 2010–4 Private Equity Fund.
	20110935	G	Robert M. Chipman; LPF Atlanta LLC; Robert M. Chipman.
	20110936	G	2003 TIL Settlement; LPF Atlanta LLC; 2003 TIL Settlement.
	20110937	G	Publicis Groupe S.A.; Lindsay Goldberg & Bessemer II MV L.P.; Publicis Groupe S.A.
	20110938	G	TPG Partners VI, L.P.; PRIMEDIA Inc.; TPG Partners VI, L.P.
06/07/2011	20110901	G	Kratos Defense & Security Solutions, Inc.; Integral Systems, Inc.; Kratos Defense & Security Solutions, Inc.
	20110923	G	Leeds Equity Partners V, L.P.; Nobel Learning Communities, Inc.; Leeds Equity Partners V, L.P.
	20110946	G	Kinove Luxembourg Holdings I S.a.r.l. (''KLH I''); Evonik Industries AG; Kinove Luxembourg Holdings I S.a.r.l. (''KLH I'').
	20110957	G	Golden Gate Capital Opportunity Fund, L.P.; California Pizza Kitchen, Inc.; Golden Gate Capital Opportunity Fund, L.P.
06/09/2011	20110880	G	Constellation Energy Group, Inc.; MXenergy Holdings Inc.; Constellation Energy Group, Inc.
06/10/2011	20110874	G	PepsiCo, Inc. Pastega Investment Company LLC; PepsiCo, Inc.

EARLY TERMINATIONS GRANTED—Continued

[June 1, 2011 thru June 30, 2011]

ET date	Trans. No.	ET req status	Party name
	20110917	G	Roger S. Penske; Donald J. Crevier; Roger S. Penske.
	20110945	G	University of Maryland Medical System Corporation; Civista Health, Inc.; University of Maryland Medical System Corporation.
	20110953	G	Wayzata Opportunities Fund, LLC; Entegra Power Group LLC; Wayzata Opportunities Fund, LLC.
	20110954	G	Wayzata Opportunities Fund II, L.P.; Entegra Power Group LLC; Wayzata Opportunities Fund II, L.P.
	20110956	G	Honeywell International Inc.; Sunoco, Inc.; Honeywell International Inc.
	20110960	G	Sunoco Logistics Partners L.P.; Sunoco, Inc.; Sunoco Logistics Partners L.P.
06/13/2011	20110867	G	Ebro Food S.A.; SOS Corporacion Alementaria, S.A.; Ebro Food S.A.
	20110918	G	2003 TIL Settlement; Thoma Cressey Fund VIII, L.P.; 2003 TIL Settlement.
	20110942	G	Wells Fargo & Company; Castle Pines Partners LLC; Wells Fargo & Company.
06/14/2011	20110891	G	The AES Corporation; DPL Inc.; The AES Corporation.
	20110965	G	Water Street Healthcare Partners II, L.P.; Michael C. Bicker; Water Street Healthcare Partners II, L.P.
06/15/2011	20110870	G	CenturyLink, Inc.; SAVVIS, Inc.; CenturyLink, Inc.
	20110875	G	John C. Malone; Liberty Splitco, Inc.; John C. Malone.
	20110876	G	Robert R. Bennett; Liberty Splitco, Inc.; Robert R. Bennett.
	20110941	G	Alinda Infrastructure Fund II, L.P.; General Electric Company; Alinda Infrastructure Fund II, L.P.
	20110948	G	Norpax LLC; Nortel Networks Corporation; Norpax LLC.
	20110955	G	The Resolute Fund II, L.P.; Odyssey Investment Partners Fund III, L.P.; The Resolute Fund II, L.P.
	20110966	G	Tutor Perini Corporation; Lunda Construction Company; Tutor Perini Corporation.
06/16/2011	20110881	G	Microsoft Corporation; Skype Global S.a.r.l.; Microsoft Corporation.
06/17/2011	20110878	G	Daimler AG; Tognum AG; Daimler AG.
	20110879	G	Rolls-Royce Group plc; Tognum AG; Rolls-Royce Group plc.
	20110975	G	The Doctors Company; FPIC Insurance Group, Inc.; The Doctors Company.
	20110976	G	Tulip Holding Limited; Churchill Equity and ESOP, L.L.C.; Tulip Holding Limited.
	20110979	G	Seedling Trust U/A DTD 11/01/2006; Flakeboard Company Limited; Seedling Trust U/A DTD 11/01/2006.
	20110981	G	Heaven Hill Distilleries, Inc.; Donn S. Lux, Trustee of the Ann S. Lux 2005 Irrevocable Trus; Heaven Hill Distilleries, Inc.
	20110984	G	Exelon Corporation; Shepherd Investments International, Ltd.; Exelon Corporation.
	20110986	G	Deckers Outdoor Corporation; C&C Partners, Ltd.; Deckers Outdoor Corporation.
	20110987	G	Aurubis AG; Nordic Capital V, L.P.; Aurubis AG.
	20110989	G	Basic Energy Services, Inc.; Maverick Stimulation Company, LLC; Basic Energy Services, Inc.
	20110990	G	Valour Holdings, L.P.; Wind Point Partners IV, L.P.; Valour Holdings, L.P.
	20110993	G	Lundbeckfonden (The Lundbeck Foundation); Nordic Capital V Ltd.; Lundbeckfonden (The Lundbeck Foundation).
	20110997	G	Bank of America Corporation; ING Furman Selz Investors III L.P.; Bank of America Corporation.
06/20/2011	20110967	G	IH AIV, a to-be-formed limited partnership; VS&A Communications Partners III, L.P.; IH AIV, a to-be-formed limited partnership.
	20110983	G	Pola Orbis Holdings Inc.; H2O Plus Holdings, LLC; Pola Orbis Holdings Inc.
06/21/2011	20110999	G	GTCR Fund X/B L.P.; Emmis Communications Corporation; GTCR Fund X/B L.P.
06/22/2011	20110842	G	Apple Inc.; Nortel Networks Corporation; Apple Inc.
06/23/2011	20110963	G	The Timken Company; American Manufacturing Corporation; The Timken Company.
	20110972	G	Dynamics Research Corporation; Timothy P. Keenan; Dynamics Research Corporation.
	20110982	G	Rockstar Bidco, LP; Nortel Networks Corporation; Rockstar Bidco, LP.
	20110988	G	Intel Corporation; Nortel Networks Corporation; Intel Corporation.
	20110992	G	CF Turul LLC; Harbinger Capital Partners Master Fund I, Ltd.; CF Turul LLC.
	20110996	G	Roark Capital Partners II, LP; Wendy's/Arby's Group, Inc.; Roark Capital Partners II, LP.
	20110998	G	The Allstate Corporation; White Mountains Insurance Group, Ltd.; The Allstate Corporation.
06/24/2011	20110940	G	Thomas H. Lee (Alternative) Fund VI, L.P.; Sword Group SE; Thomas H. Lee (Alternative) Fund VI, L.P.
	20110980	G	Carl C. Icahn; Forest Laboratories, Inc.; Carl C. Icahn.
	20111001	G	Allstar AIV, a to-be formed limited partnership; Academy Holdings, Inc.; Allstar AIV, a to-be formed limited partnership.
	20111003	G	Joh. A. Benckiser SE; TowerBrook Investors II, L.P.; Joh. A. Benckiser SE.

EARLY TERMINATIONS GRANTED—Continued

[June 1, 2011 thru June 30, 2011]

ET date	Trans. No.	ET req status	Party name
	20111008	G	Joe R. Davis; Consolidated Graphics, Inc.; Joe R. Davis.
	20111010	G	Audax Private Equity Fund III, L.P.; Integrated Supply Network, Inc.; Audax Private Equity Fund III, L.P.
	20111012	G	Marathon Oil Corporation; Jeffery D. Hildebrand; Marathon Oil Corporation.
	20111013	G	LyondellBasell Industries, N.V.; B.P. p.l.c.; LyondellBasell Industries, N.V.
	20111014	G	Sealed Air Corporation; Appointive Distributing Trust B u/a Samuel Johnson 1988 T#1 ; Sealed Air Corporation.
	20111025	G	DG FastChannel, Inc.; MediaMind Technologies Inc.; DG FastChannel, Inc.
06/27/2011	20110973	G	Moelis Capital Partners Opportunity Fund I, LP; Roark Capital Partners, LP; Moelis Capital Partners Opportunity Fund I, LP.
	20111011	G	Telephone and Data Systems, Inc. Voting Trust; OneNeck IT Services Corporation; Telephone and Data Systems, Inc. Voting Trust.
	20111020	G	Experian plc; Medical Present Value, Inc.; Experian plc.
06/28/2011	20110995	G	Ashland Inc.; Ronnie F. Heyman; Ashland Inc.
	20111006	G	Securitas AR; Niscayah Group AR; Securitas AB.
06/29/2011	20111004	G	WellPoint, Inc.; JPMorgan Chase & Co.; WellPoint, Inc.
	20111026	G	Herff Jones, Inc.; Green Equity Investors IV, L.P.; Herff Jones, Inc.
06/30/2011	20110978	G	QUALCOMM, Incorporated; Massih Tayebi and Haleh Tayebi; QUALCOMM, Incorporated.

FOR FURTHER INFORMATION CONTACT: Renee Chapman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–17525 Filed 7–14–11; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–10GY]

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 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Community Assessment and Engagement Process—New—Division of Health Assessment and Consultation (DHAC), Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

ATSDR serves the public through responsive public health actions to promote healthy and safe environments and to prevent harmful exposures. To effectively implement ATSDR's programs, the agency works with communities by listening to and understanding their health concerns and seeking their guidance on where, when, and how to take public health actions. Communities in proximity to hazardous waste sites are concerned that they are being exposed to hazardous substances being released into the environment. Community assessment data will enable ATSDR to determine the perceived needs, concerns, values, and priorities of communities we serve and determine their willingness, interest and ability to participate in community engagement activities.

In order to secure this data, ATSDR will interview adult males and females ages 18 and over living near petitioned or National Priorities List (NPL) sites. ATSDR will also identify health and other concerns and the most effective channels of communication and venues for engagement.

ATSDR staff will work with key stakeholders in communities to interview participants. These interviews will take the form of in-depth or telephone interviews with five audiences: general residential population (n = 600), public/private health care providers (n = 200), community leaders (n = 200), elected officials (n = 100), and industry leaders (n = 100).

In-depth Interviews will take place at the individual's residence, at a predetermined interview location, at ATSDR-sponsored town hall meetings, or other ATSDR-sponsored functions. Telephone interviews will take place at the individual's residence or business location. Findings from these interviews will be used to determine how ATSDR will engage the community in addressing environmental concerns. Interview findings will also help ATSDR reach as many of the members of the affected community as possible and ensure that all community members are given an opportunity to provide input to ATSDR regarding public health assessment and community involvement activities. There are no costs to the respondents other than their time. The total annualized burden is estimated to be 1600 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Responses per respondent	Average burden per response (in hours)
General Resident	In-depth Interview/phone	600	1	1.5
	Screener	1200	1	6/60
Health care provider	In-depth Interview/phone	200	1	30/60
	Screener	400	1	6/60
Community Leader	In-depth Interview/phone	200	1	1.5
	Screener	400	1	6/60
Elected Official	In-depth Interview/phone	100	1	30/60
Industry	In-depth Interview/phone	100	1	30/60

Dated: July 11, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–17824 Filed 7–14–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–11IR]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Carol E. Walker, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of Core Violence and Injury Prevention Program (Core VIPP)—New—National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Injuries and their consequences, including unintentional and violence-related injuries, are the leading cause of death for the first four decades of life, regardless of gender, race, or socioeconomic status. More than 179,000 individuals in the United States die each year as a result of unintentional injuries and violence, more than 29 million others suffer non-fatal injuries and over one-third of all emergency department (ED) visits each year are due to injuries. In 2000, injuries and violence ultimately cost the United States $406 billion, with over $80 billion in medical costs and the remainder lost in productivity.[1] Most events that result in injury and/or death from injury could be prevented if evidence-based public health strategies, practices, and policies were used throughout the nation.

CDC's National Center for Injury Prevention and Control (NCIPC) is committed to working with their partners to promote action that reduces injuries, violence, and disabilities by providing leadership in identifying priorities, promoting tools, and monitoring effectiveness of injury and violence prevention and to promote effective strategies for the prevention of injury and violence, and their consequences. One tool NCIPC will use to accomplish this is the Core Violence and Injury Prevention Program (VIPP). This program funds state health departments to build effective delivery systems for dissemination, implementation and evaluation of evidence based/best practice programs and policies.

Core VIPP also focuses on the integration of unintentional injury and violence prevention. Unintentional injury and violence prevention have many common risk and protective factors for children. In an endeavor to promote efforts to prevent child maltreatment, a NCIPC priority, CDC is collaborating with the Health Resources and Services Administration (HRSA) regarding the new Affordable Care Act (ACA) Maternal, Infant, and Early Childhood Home Visiting Program. The state health departments funded by the Core VIPP will be required to partner with the state agency responsible for administration of the State Home Visiting program.

CDC requests OMB approval to collect program evaluation data for Core VIPP over a two-year period. Specifically, CDC will use a Planning and Evaluation Tool (PET) that is being developed for the Core VIPP grantees. This tool provides CDC the means to collect standardized, systematic data from the Core VIPP grantees. Topics for data collection include: Program evaluation, state health department (SHD) injury program infrastructure, injury program strategies and partners, policy strategies, injury surveillance, quality of surveillance, and regional network leaders. Part of the requirement for receiving Core VIPP funding is for SHDs to develop and maintain program their own evaluation capacity and data systems; thus, this data collection is not expected to entail significant burdens to respondents.

There are no costs to respondents other than their time.

[1] Finkelstein EA, Corso PS, Miller TR, Associates. Incidence and Economic Burden of Injuries in the United States. New York: Oxford University Press; 2006.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs)	Total burden (in hrs)
Core VIPP funded SHD Injury Program director.	Web-based survey	20	1	1	20
Core VIPP funded SHD Injury Program director.	Telephone Interviews	20	1	1.5	30
Non-funded SHD Injury Program director.	Web-based survey	30	1	1	30
Total					80

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–17812 Filed 7–14–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–9042, CMS–10374, CMS–10385, and CMS–10402]

Agency Information Collection Activities: Proposed Collection; Comment Request; Correction

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Accelerated Payments and Supporting Regulations 42 CFR 412.116(f), 412.632(e), 413.64(g), 413.350(d), and 484.245; *Use:* This information is used by the contractor to determine the provider's eligibility for accelerated payments. If this information were not furnished with an accelerated payment request, the contractor would not be able to assess whether the provider's financial difficulties justified the accelerated payment; *Form Number:* CMS–9042 (OMB # 0938–0269); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 37,804; *Total Annual Responses:* 945; *Total Annual Hours:* 473. (For policy questions regarding this collection contact Leonard Fisher at 410–786–4574 TTY. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection of information; *Title of Information Collection:* Training Needs Assessment, Evaluation/Survey—Question Compilation; *Use:* The intent of this information collection is to assist in the creation and enhancement of training for Federal and State health care surveyors and certification specialists. The purpose of the collection is to gather information for training needs assessment, training analysis, related demographic, psychographics and technographics to support the development and enhancement of training and training aids; *Form Number:* CMS–10374 (OMB # 0938–New); *Frequency:* Half-year (2 per year); *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 2,161; *Total Annual Responses:* 4,322; *Total Annual Hours:* 1,430. (For policy questions regarding this collection contact Etolia Biggs at 410–786–8664. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Expedited Checklist: Medicaid Eligibility & Enrollment Systems—Advance Planning Document (E&E–APD); *Use:* Under sections 1903(a)(3)(A)(i) and 1903(a)(3)(B) of the Social Security Act, CMS has issued new standards and conditions that must be met by States for Medicaid technology investments (including traditional claims processing systems, as well as eligibility systems) to be eligible for enhanced match funding. The Checklist will be submitted by States to the E&E APD National Coordinator for review and coordination in the Eligibility/Enrollment Systems APD approval assignment. The information requested on the Checklist will be used to determine and approve enhanced FFP to States and to determine how States are complying with the seven standards and conditions; *Form Number:* CMS–10385 (OMB#: 0938–1125); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 168; *Total Annual Hours:* 204. (For policy questions regarding this collection contact Richard Friedman at 410–786–4451. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicaid State Plan Preprint for Use by States When Implementing Section 6401 of the Patient Protection and Affordable Care Act under the Medicaid Program; *Use:* The Secretary, in consultation with the Department of Health of Human Services' Office of the Inspector General, is required to establish procedures under which screening is conducted with respect to providers of medical or other items or services and suppliers under Medicare, Medicaid, and CHIP. The Secretary is also required to impose a fee on each institutional provider of medical or other items or services or supplier that would be used by the Secretary for program integrity efforts. States are required to comply with the process of screening providers and suppliers as established by the Secretary under 1866(j)(2) of the Affordable Care Act. The Office of General Counsel through guidance, is requiring that States use the Medicaid State Plan Preprint to assure CMS compliance with the law. CMS will use the information to review and approve

the State plan. States would refer to the State plan on an as needed basis to manage and operate their Medicaid programs under Title XIX of the Social Security Act; *Form Number:* CMS–10402 (OMB # 0938–New); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 14. (For policy questions regarding this collection contact Richard Friedman at 410–786–4451. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.gov/PaperworkReductionActof1995/PRAL/list.asp#TopOfPage* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

In commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *September 13, 2011:*

1. Electronically. You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. By regular mail. You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Notice of Correction

A notice published on July 1, 2011 (76 FR 38657) incorrectly included text for CMS–10385 (OMB#: 0938–1125) concerning an Expedited Checklist: Medicaid Eligibility & Enrollment Systems—Advance Planning Document (E&#-APD). This correction removes that paragraph.

Correction

In the **Federal Register** of July 1, 2011, in the FR Doc. 2011–16599, on page 38657 (in the third column) and on page 38658 (in the first column) remove the paragraph designated ''2.''.

Dated: July 12, 2011.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–17890 Filed 7–14–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Estimated Federal Allotments to State Developmental Disabilities Councils and Protection and Advocacy Systems Formula Grant Programs for Fiscal Year 2012

AGENCY: Administration on Developmental Disabilities (ADD), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notification of Estimated Fiscal Year (FY) 2012 Federal Allotments to State Developmental Disabilities Councils and Protection and Advocacy Systems Formula Grant Programs.

SUMMARY: This notice sets forth estimated FY 2012 individual allotments and estimated percentages of the total allotments to States administering the State Developmental Disabilities Councils and Protection and Advocacy Systems programs, pursuant to section 122 and section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (the Act) [Pub. L. 106–402, October 30, 2000]. The estimated allotment amounts are based on the FY 2012 President's Budget request and are contingent on Congressional appropriations for FY 2012. Once Congress enacts an appropriation for FY 2012 and after ADD updates the data elements listed in the **SUPPLEMENTARY INFORMATION** section below, the estimated allotments will be adjusted accordingly. The estimated allotments contained herein will be adjusted for FY2012.

The final State allotments will be available on the ADD homepage after a final 2012 Continuing Resolution or HHS appropriations bill is passed by Congress.

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

CFDA Number: 93.630, Developmental Disabilities Basic Support and Advocacy Grants.

SUPPLEMENTARY INFORMATION: Section 122(a)(2) of the Act requires that adjustments in the amounts of State allotments shall be made not more often than annually and that States must be notified no less than six months before the beginning of the fiscal year in which such adjustment is to take effect. In relation to the State Developmental Disabilities Council allotments, the descriptions of service needs were reviewed in the State plans and are consistent with the results obtained from the data elements and projected formula amounts for each State (Section 122(a)(5)). In addition, Section 142(a) of the Act makes the allotment and reallotment structure in Section 122 applicable to grants to States for Protection and Advocacy Systems.

ADD will update the following FY 2011 data elements for issuance of FY 2012 allotments for both of the Developmental Disabilities formula grant programs:

The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program are from Table 5.J10 of the 2009 Annual Statistical Supplement to the Social Security Bulletin issued by the Social Security Administration;

State data on Per Capita Income are from Table SA1–3—Per Capita Personal Income, 2006–2008 from the Regional Economic Information System, issued by the Bureau of Economic Analysis, U.S. Department of Commerce, September 2010. The most recent comparable data for the Territories were obtained from the U.S. Department of Commerce, October 2009; and

State population data is based on table GCT–T1.—Population Estimates at: July 1, 2009 issued by the U.S. Census Bureau. State working populations (ages 18–64) are based on the Estimates of the Resident Population by Selected Age Groups for the United States and Puerto Rico: July 1, 2009 (SC–EST2009–01) from the U.S. Census Bureau. Total population and working population estimates for the Territories other than Puerto Rico are based on Population and Housing Profile: 2000 data sets from the ''Island Areas'' surveys conducted as part of the 2000 Census by the U.S. Census Bureau.

FOR FURTHER INFORMATION CONTACT: Nathaniel Morris West, Financial Management Specialist, Office of Grants Management, Office of Administration, Administration for Children and Families. Phone: 202–401–1230, e-mail: *nathaniel.west@acf.hhs.gov.*

TABLE 1—ESTIMATED [1] FY 2012 ALLOTMENTS ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

[Developmental disabilities councils]

	Percentage of total allotted	Estimated 2012 allotment
Total	100.00000	$74,915,868
Alabama	0.01817	1,361,187
Alaska	0.00638	477,839
Arizona	0.01976	1,480,235
Arkansas	0.01067	799,589
California	0.09216	6,904,064
Colorado	0.01219	913,428
Connecticut	0.00967	724,261
Delaware	0.00638	477,839
District of Columbia	0.00638	477,839
Florida	0.04964	3,719,155
Georgia	0.02896	2,169,638
Hawaii	0.00638	477,839
Idaho	0.00638	477,839
Illinois	0.03514	2,632,891
Indiana	0.01999	1,497,561
Iowa	0.01031	772,628
Kansas	0.00819	613,359
Kentucky	0.01696	1,270,824
Louisiana	0.01884	1,411,558
Maine	0.00638	477,839
Maryland	0.01343	1,006,143
Massachusetts	0.01873	1,403,346
Michigan	0.03461	2,592,887
Minnesota	0.01366	1,023,244
Mississippi	0.01286	963,145
Missouri	0.01836	1,375,516
Montana	0.00638	477,839
Nebraska	0.00638	477,839
Nevada	0.00665	498,459
New Hampshire	0.00638	477,839
New Jersey	0.02118	1,586,644
New Mexico	0.00680	509,501
New York	0.05827	4,365,667
North Carolina	0.02835	2,123,553
North Dakota	0.00638	477,839
Ohio	0.03824	2,865,133
Oklahoma	0.01195	895,455
Oregon	0.01109	830,833
Pennsylvania	0.04197	3,144,463
Rhode Island	0.00638	477,839
South Carolina	0.01522	1,140,506
South Dakota	0.00638	477,839
Tennessee	0.02023	1,515,680
Texas	0.06802	5,095,817
Utah	0.00905	677,662
Vermont	0.00638	477,839
Virginia	0.02001	1,498,925
Washington	0.01678	1,257,339
West Virginia	0.01050	786,863
Wisconsin	0.01738	1,301,666
Wyoming	0.00638	477,839
American Samoa	0.00332	248,845
Guam	0.00332	248,845
Commonwealth of the Northern Marianas Islands (CNMI)	0.00332	248,845
Puerto Rico	0.03340	2,501,917
U.S. Virgin Islands	0.00332	248,845

TABLE 2—ESTIMATED [1] FY 2012 ALLOTMENTS ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

[Protection and advocacy systems]

	Percentage of total allotted	Estimated 2012 allotment
Total	100.00000	[2] $40,123,113
Alabama	0.01646	660,543
Alaska	0.00959	384,693
Arizona	0.01748	701,542
Arkansas	0.01020	409,079

TABLE 2—ESTIMATED [1] FY 2012 ALLOTMENTS ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

[Protection and advocacy systems]

	Percentage of total allotted	Estimated 2012 allotment
California	0.08484	3,403,846
Colorado	0.01155	463,556
Connecticut	0.00994	398,784
Delaware	0.00959	384,693
District of Columbia	0.00959	384,693
Florida	0.04679	1,877,320
Georgia	0.02780	1,115,512
Hawaii	0.00959	384,693
Idaho	0.00959	384,693
Illinois	0.03383	1,357,362
Indiana	0.01990	798,483
Iowa	0.00973	390,580
Kansas	0.00959	384,693
Kentucky	0.01555	623,981
Louisiana	0.01520	609,929
Maine	0.00959	384,693
Maryland	0.01244	499,010
Massachusetts	0.01600	641,917
Michigan	0.03232	1,296,851
Minnesota	0.01328	533,010
Mississippi	0.01154	463,159
Missouri	0.01838	737,510
Montana	0.00959	384,693
Nebraska	0.00959	384,693
Nevada	0.00959	384,693
New Hampshire	0.00959	384,693
New Jersey	0.01961	786,673
New Mexico	0.00959	384,693
New York	0.04964	1,991,618
North Carolina	0.02813	1,128,824
North Dakota	0.00959	384,693
Ohio	0.03598	1,443,662
Oklahoma	0.01091	437,660
Oregon	0.01070	429,424
Pennsylvania	0.03710	1,488,376
Rhode Island	0.00959	384,693
South Carolina	0.01503	602,915
South Dakota	0.00959	384,693
Tennessee	0.01979	794,135
Texas	0.06211	2,491,848
Utah	0.00959	384,693
Vermont	0.00959	384,693
Virginia	0.01933	775,504
Washington	0.01581	634,184
West Virginia	0.00988	396,242
Wisconsin	0.01688	677,276
Wyoming	0.00959	384,693
American Samoa	0.00513	205,808
Guam	0.00513	205,808
Commonwealth of the Northern Marianas Islands (CNMI)	0.00513	205,808
Puerto Rico	0.02765	1,109,284
U.S. Virgin Islands	0.00513	205,808
Native American Protection and Advocacy [3]	0.00513	205,808

[1] Fiscal Year 2012 Estimated Allotments are based on FY 2011 actual allotments.

[2] In accordance with Public Law 106–402, Section 142(a)(6)(A), up to $818,839 may be withheld from the appropriated amount to fund technical assistance as the statute provides for spending up to two percent of the amount appropriated for this purpose. Unused funds will be re-allotted in accordance with Section 122(e) of the Act.

[3] American Indian Consortia are eligible to receive an allotment under Section 142(a)(6)(B) of the Act.

Dated: July 11, 2011.

Joseph Lonergan,

Director, Division of Mandatory Grants.

[FR Doc. 2011–17858 Filed 7–14–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0095]

Guidance for Industry and Food and Drug Administration Staff; Establishing the Performance Characteristics of In Vitro Diagnostic Devices for the Detection or Detection and Differentiation of Influenza Viruses; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Establishing the Performance Characteristics of In Vitro Diagnostic Devices for the Detection or Detection and Differentiation of Influenza Viruses.'' FDA is issuing this guidance to inform industry and Agency staff of its recommendations for analytical and clinical performance studies to support premarket submissions for in vitro diagnostic devices intended for the detection or detection and differentiation of influenza viruses.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Establishing the Performance Characteristics of In Vitro Diagnostic Devices for the Detection or Detection and Differentiation of Influenza Viruses'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the 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. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Tamara Feldblyum, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5550, Silver Spring, MD 20993, 301–796–6195.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document recommends studies that may be used to establish the analytical and clinical performance of in vitro diagnostic devices (IVDs) for the detection or detection and differentiation of influenza viruses. The document addresses devices that detect either influenza viral antigens or influenza viral genome (protein or nucleic acid), including those for novel influenza viruses in either human specimens or culture isolate. The guidance does not address devices that detect serological response from the host to the viral antigen, nor does it address establishing performance of non-influenza components of multi-analyte or multiplex devices. This guidance document identifies the classification regulations and product codes for existing legally marketed influenza tests and supplements other FDA documents that discuss the specific contents of premarket submissions. The draft of the guidance was issued for comment for 90 days on February 15, 2008. A total of four sets of comments were received. In response to comments, FDA made clarifying edits in several sections, and also added a section on determining the assay cut-off and equivocal zone. In addition, to address growing complexity of the devices, new sections were added regarding labeling, instrumentation, hardware and software, use of fresh and frozen specimens, nucleic acids extraction methods, and recommendations to help monitor postmarket device performance.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on ''Establishing the Performance Characteristics of In Vitro Diagnostic Devices for the Detection or Detection and Differentiation of Influenza Viruses.'' 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 the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive the document ''Establishing the Performance Characteristics of In Vitro Diagnostic Devices for the Detection or Detection and Differentiation of Influenza Viruses,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1638 to identify the guidance you are requesting.

IV. Paperwork Reduction Act

This 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 21 CFR 56.115 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR 809.10 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; and the collections of information in 42 CFR part 493 have been approved under OMB control number 0910–0598.

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.

Dated: *July 11, 2011.*

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–17777 Filed 7–14–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0496]

Town Hall Discussion With the Director of the Center for Devices and Radiological Health and Other Senior Center Management

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing a public meeting entitled ''Town Hall Discussion With the Director of the Center for Devices and Radiological Health and Other Senior Center Management.'' The purpose of this public meeting in San Francisco, CA, is to engage in a dialogue about issues of importance to FDA's Center for Devices and Radiological Health (CDRH) and to members of the public, including the medical device industry, health care professionals, patients, and consumers.

Date and Time: The public meeting will be held on Thursday, September 22, 2011, from 8 a.m. to 12 noon PDT.

Location: The public meeting will be held at the Embassy Suites Hotel, San Francisco Airport, 250 Gateway Blvd., South San Francisco, CA 94080. Attendees requiring overnight accommodations should call 650–589–3400 and request the group rate for the ''FDA/CDRH Town Hall Meeting'' block of rooms.

Contact: Heather Howell, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4320, Silver Spring, MD 20993, 301–796–5718, e-mail: *heather.howell@fda.hhs.gov.*

Registration and Requests for Oral Presentations: If you wish to attend the public meeting, you must register online at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm258228.htm.* Persons without Internet access may call Heather Howell at 301–796–5718 to register for the meeting.

Provide complete contact information for each attendee, including name, title, company or organization, address, e-mail, and telephone and fax number. Registration requests must be received by 5 p.m. EDT on Friday, September 9, 2011.

The meeting will not be videotaped or Web cast.

If you wish to make an oral presentation during the meeting, you must indicate this at the time of registration. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and to request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin.

Registration is free and will be on a first-come-first-served basis. Early registration is recommended because seating is limited. FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration the day of the public meeting will be provided on a space-available basis beginning at 7 a.m. PDT on September 22, 2011.

If you need special accommodations due to a disability, please contact Susan Monahan, 301–796–5661 or *susan.monahan@fda.hhs.gov,* at least 7 days in advance of the meeting.

Comments: FDA is holding this public meeting to share information and discuss issues of importance to the public, including the medical device industry, health care professionals, patients, and consumers.

Regardless of attendance at the public meeting, interested persons may submit either electronic or written comments. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. 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.

SUPPLEMENTARY INFORMATION:

I. Background

In 2010, CDRH held three Town Hall meetings in Minneapolis, MN, Boston, MA, and Los Angeles, CA, to provide the public with a new venue to discuss issues of interest with the Center. Any member of the public was invited to provide comments to or ask questions of CDRH participants. We received positive feedback on these meetings and are continuing this activity in 2011 in three new locations. This year we have held two meetings: one in Dallas, TX, and one in Orlando, FL. The meeting in San Francisco will be our final meeting of 2011.

II. Public Meeting

The objective of this public meeting is to engage in a dialogue about issues that are of importance to the public.

The public meeting will open with an introduction of CDRH senior staff in attendance. Following introductions, Dr. Jeffrey Shuren, the Director of CDRH, will describe CDRH's strategic priorities for 2011. Members of the public will then be given the opportunity to present comments to CDRH senior staff followed by a question and answer session during which any member of the public may ask questions of the CDRH senior staff on any topic of interest.

In advance of the meeting, additional information, including a meeting agenda with a speakers' schedule, will be made available on the Internet. This information will be placed on file in the public docket (docket number found in brackets in the heading of this document), which is available at *http://www.regulations.gov.* This information will also be available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate meeting from the list).

III. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: July 11, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–17887 Filed 7–14–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial (PLCO) (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 20, 2011 (76 FR 22108) and allowed 60 days for public comment. One public comment was received on April 20, 2011 which commented on the government spending money to support NIH. An email response was sent on May 18, 2011 stating, ''Thank you for your comments and we will take it under advisement.'' The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial (PLCO) (NCI). *Type of Information Collection Request:* Revision (OMB #: 0925–0407, current expiry date 10/31/2011). *Need and Use of Information Collection:* This trial is designed to determine if screening for prostate, lung, colorectal and ovarian cancer can reduce mortality from these cancers which currently cause an estimated 254,570 deaths annually in the U.S. The design is a two-armed randomized trial of men and women aged 55 to 74 at entry. OMB first approved this study in 1993 and has approved it every 3 years since then through 2011. During the first approval period a pilot study was conducted to evaluate recruitment methods and data collection procedures. Recruitment was completed in 2001 and data collection continues through 2014. When participants enrolled in the trial they agreed to be followed for at least 13 years from the time of enrollment. The current number of respondents in the study is 122,655; this is down from the initial total due to deaths. The primary endpoint of the trial is cancer specific mortality for each of the four cancer sites (prostate, lung, colorectal, and ovary). In addition, cancer incidence, stage shift, and case survival are to be monitored to help understand and explain results. Biologic prognostic characteristics of the cancers will be measured and correlated with mortality to determine the mortality predictive value of these intermediate endpoints. Basic demographic data, risk factor data for the four cancer sites and screening history data, as collected from all subjects at baseline, will be used to assure comparability between the screening and control groups and make appropriate adjustments in analysis. Further, demographic and risk factor information may be used to analyze the differential effectiveness of screening in high versus low risk individuals. *Frequency of Response:* Annually. *Affected Public:* Individuals. *Type of Respondents:* Adult men and women. The annual reporting burden is provided for each study component as shown in the Table 1 below. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Survey instrument	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Annual burden hours
Male and Female Participants	ASU	92,941	1.00	5/60 (0.08)	7,745
	HSQ	2,000	1.00	5/60 (0.08)	167
	SQX	92,941	1.00	30/60 (0.50)	46,471
Total					54,383

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Christine D. Berg, Chief, Early Detection Research Group, National Cancer Institute, NIH, EPN Building, Room 3100, 6130 Executive Boulevard, Bethesda, MD 20892, or call non-toll-free number 301–496–8544 or e-mail your request, including your address to: *bergc@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: July 7, 2011.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2011–17750 Filed 7–14–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Unsolicited P01 Applications.

Date: August 3, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call)

Contact Person: Roberta Binder, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, Room 3130, Bethesda, MD 20892–7616, 301–496–7966, *rbinder@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 11, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–17880 Filed 7–14–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0336]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding Information Collection Requests (ICRs), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), an extension of its approval for the following collections of information: 1625–0077, Security Plans for Ports, Vessels, Facilities, and Outer Continental Shelf Facilities and Other Security-Related Requirements; 1625–0085, Streamlined Inspection Program; and 1625–0112, Enhanced Maritime Domain Awareness via Electronic Transmission of Vessel Transit Data. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before August 15, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–0336] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by e-mail via: *OIRA-submission@omb.eop.gov.*

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICRs referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request [USCG 2011–0336], and must be received by August 15, 2011. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an

agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2011–0336], indicate the specific section of the document to which each comment applies, providing a reason for each comment. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2011–0336'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0336'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Numbers: 1625–0077, 16225–0085 and 1625–0112.

Privacy Act

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

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (76 FR 26746, May 9, 2011) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

1. *Title:* Security Plans for Ports, Vessels, Facilities, and Outer Continental Shelf Facilities and Other Security-Related Requirements.

OMB Control Number: 1625–0077.

Type of Request: Extension of a currently approved collection.

Respondents: Vessel and facility owners and operators.

Abstract: This information collection is associated with the maritime security requirements mandated by the Maritime Transportation Security Act (MTSA) of 2002. Security assessments, security plans and other security-related requirements are found in Title 33 CFR chapter I, subchapter H, and 33 CFR parts 120 and 128.

Forms: CG–6025, CG–6025A.

Burden Estimate: The estimated burden has decreased from 1,278,068 hours to 1,108,043 hours a year.

2. *Title:* Streamlined Inspection Program.

OMB Control Number: 1625–0085.

Type of Request: Extension of a currently approved collection.

Respondents: Owners and operators of vessels.

Abstract: The Coast Guard established an optional Streamlined Inspection Program (SIP) to provide owners and operators of U.S. vessels an alternative method of complying with inspection requirements of the Coast Guard.

Forms: Not applicable.

Burden Estimate: The estimated burden has increased from 2,496 hours to 2,774 hours a year.

3. *Title:* Enhanced Maritime Domain Awareness via Electronic Transmission of Vessel Transit Data.

OMB Control Number: 1625–0112.

Type of Request: Extension of a currently approved collection.

Respondents: Owners or operators of certain vessels.

Abstract: The Coast Guard collects, stores, and analyzes data transmitted by Long Range Identification and Tracking to enhance maritime domain awareness (MDA). Awareness and threat knowledge are critical for securing the maritime domain and the key to preventing adverse events. Domain awareness enables the early identification of potential threats and enhances appropriate responses, including interdiction at an optimal distance with capable prevention forces.

Forms: None.

Burden Estimate: The estimated burden has increased from 150 hours to 204 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: July 8, 2011.

C.A. Mathieu,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–17805 Filed 7–14–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–28]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist

the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated July 7, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2011–17500 Filed 7–14–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Regional Tribal Consultations on Implementation of Indian Land Consolidation Program Under Cobell Settlement

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Regional Tribal Consultation Meetings.

SUMMARY: The Office of the Secretary is announcing that it will conduct a series of regional consultation meetings with Indian tribes to obtain oral and written comments concerning the implementation of the Indian Land Consolidation Program (ILCP) under the terms of the *Cobell* Settlement. The initial regional consultation meeting in Billings, Montana, was announced by a previous notice in the **Federal Register.** This notice announces five additional regional consultation meetings. See the **SUPPLEMENTARY INFORMATION** section of this notice for details.

DATES: The first regional tribal consultation meeting will take place on Friday, July 15, 2011, in Billings, Montana. Additional regional consultations will take place on Thursday, August 18, 2011, in Minneapolis, Minnesota; Friday, September 16, 2011, in Seattle, Washington; Tuesday, September 27, 2011, in Albuquerque, New Mexico; Thursday, September 29, 2011, in Phoenix, Arizona; and Thursday, October 6, 2011, in Oklahoma City, Oklahoma. Comments for all aforementioned consultations must be received by October 15, 2011.

ADDRESSES: Michele F. Singer, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104.

FOR FURTHER INFORMATION CONTACT: Michele F. Singer, telephone (505) 563–3805; fax (505) 563–3811 or access additional details for each consultation via the DOI Cobell website at *www.doi.gov/cobell.*

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Indian Affairs' ILCP purchases fractionated interests of individually owned trust or restricted fee lands and transfers those consolidated interests into tribal ownership pursuant to the Indian Land Consolidation Act, 25 U.S.C. 2201 *et seq.* The Indian Claims Resolution Act of 2010, Public Law 111–291, makes available $1.9 billion, the majority of which will be used by the Secretary to operate the ILCP with the purpose addressing the problem of fractionation. The Act requires consultation with Indian tribes to identify fractional interests within the respective jurisdictions of the Indian tribes that the Department may want to consider purchasing.

Information and statistics regarding the issue of land fractionation will be distributed to the federally-recognized Indian tribes prior to the consultations. The information will also be made available to attendees on the day of each consultation.

II. Meeting Details

The Office of the Secretary will hold a series of regional tribal consultation meetings on the following schedule:

Date	Time	Location
Friday, July 15, 2011	8 a.m.–4 p.m	Holiday Inn Grand Montana Hotel & Convention Center 5500 Midland Road Billings, MT 59101, (406) 248–7701, www.billingsholidayinn.com.
Thursday, August 18, 2011	8 a.m.–4 p.m	Minneapolis, MN—venue to be determined.
Friday, September 16, 2011	8 a.m.–4 p.m	Seattle, WA—venue to be determined.
Tuesday, September 27, 2011	8 a.m.–4 p.m	Albuquerque, NM—venue to be determined.
Thursday, September 29, 2011	8 a.m.–4 p.m	Phoenix, AZ—venue to be determined.
Thursday, October 6, 2011	8 a.m.–4 p.m	Oklahoma City, OK—venue to be determined.

Written comments will be accepted through October 15, 2011, and may be sent to the official listed in the **ADDRESSES** section above.

Dated: July 12, 2011.

David J. Hayes,

Deputy Secretary of the Interior.

[FR Doc. 2011–17847 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2011–N084; 20124–1112–0000–F2]

Draft Environmental Impact Statement and Draft Habitat Conservation Plan for Oncor Electric Delivery Facilities in 100 Texas Counties

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of documents and announcement of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft environmental impact statement and the draft Oncor Electric Delivery Company, LLC habitat conservation plan, under the National Environmental Policy Act of 1969. Oncor has applied for an incidental take permit (TE–40918A–0) under the Endangered Species Act of 1973, as amended, to authorize incidental take of 11 Federally listed species (covered species) in 100 Texas counties.

DATES: *Comment period:* To ensure consideration, we must receive written comments on or before close of business (4:30 p.m. CDT) October 13, 2011.

Public meetings: Nine public meetings, located throughout Oncor's proposed 100-county permit area, will be held between August 1, 2011, and September 28, 2011. Exact meeting locations and times will be announced in local newspapers, on the Austin Ecological Services Office Web site (*http://www.fws.gov/southwest/es/*

AustinTexas/), and on Oncor's Web site (*www.oncor-eis-hcp.com*) at least 2 weeks prior to each meeting.

ADDRESSES: To find out how to obtain documents for review and where to submit comments, see Reviewing Documents and Submitting Comments in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, by U.S. mail at U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758, or by phone at (512) 490–0057.

SUPPLEMENTARY INFORMATION: Under the National Environmental Policy Act of 1969 (NEPA), this notice advises the public that:

(1) We, the U.S. Fish and Wildlife Service (Service), have gathered the information necessary to determine impacts and formulate alternatives for the draft environmental impact statement (dEIS) related to the potential issuance of an incidental take permit (ITP) to Oncor Electric Delivery Company, LLC (Applicant; Oncor), and

(2) That the Applicant has developed a draft habitat conservation plan (dHCP) which describes the measures Oncor has agreed to undertake to minimize and mitigate the effects of incidental take of Federally listed species to the maximum extent practicable, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* Act).

Oncor has applied for an ITP (TE–40918A–0) under section 10(a)(1)(B) of the Act. The requested ITP, which would be in effect for a period of 30 years if granted, would authorize incidental take of the following 11 Federally listed species (covered species): Large-fruited sand-verbena (*Abronia macrocarpa*), Texas poppy-mallow (*Callirhoe scabriuscula*), Navasota ladies'-tresses (*Spiranthes parksii*), Pecos sunflower (*Helianthus paradoxus*), American burying beetle (*Nicrophorus americanus*), Houston toad (*Bufo houstonensis*), whooping crane (*Grus americana*), golden-cheeked warbler (*Dendroica chrysoparia*), black-capped vireo (*Vireo atricapilla*), red-cockaded woodpecker (*Picoides borealis*), and Louisiana black bear (*Ursus americanus luteolus*). The proposed incidental take would occur in 100 Texas counties that comprise the Applicant's service area, excluding Williamson and Travis counties, and with the addition of Runnels County, and would result from activities associated with maintenance and repair of existing electric facilities and installation and operation of new facilities.

Background

Our initial notice of intent to prepare an EIS and hold public scoping meetings published in the **Federal Register** on September 22, 2009 (74 FR 48285). A summary of comments provided during the 2009 scoping period, which included meetings held at nine locations throughout the proposed 100-county permit area, is available at *http://www.fws.gov/southwest/es/AustinTexas/.*

The dHCP for maintenance and construction activities for Oncor and the conservation program described in the dHCP were developed through a collaborative effort between the Service, the Applicant, and the Applicant's consultants, and also through outreach to potential interest groups, nonprofit organizations, and other stakeholders.

The Austin Ecological Services Office Web site (*http://www.fws.gov/southwest/es/AustinTexas/*) contains information on meetings, documents, and the status of the process.

Alternatives

We are considering three alternatives as part of this process: The no action alternative, the applicant's preferred alternative, and a project-by-project alternative:

1. *No Action*—No ITP would be issued. This alternative would require the Applicant to avoid activities within the proposed permit area that would, or potentially would, result in incidental take of any Federally listed species. The Applicant would continue to perform those activities that would not, or would not be expected to, result in violation of the Act.

2. *Preferred Alternative*—Issuance of an ITP by the Service for covered activities in the 100-county permit area, pursuant to section 10(a)(1)(B) of the Act. This is the Applicant's preferred alternative. The activities that would be covered by the ITP are general activities associated with new construction, maintenance, and emergency response and restoration, including stormwater discharges from construction sites, equipment access, and surveying. Construction activities covered for new facilities include new overhead transmission and distribution lines, new support facilities such as substations and switching stations, underground electric installation, and second-circuit addition on existing structures. Maintenance activities would include vegetation management within rights of way, expansion of existing support facilities, line upgrades, insulator replacement, and maintenance of underground electric facilities. The requested ITP will cover the 100-county permit area. The requested term of the permit is 30 years.

To meet the requirements of a section 10(a)(1)(B) ITP, the Applicant has developed and will implement the dHCP, which describes the conservation measures the Applicant has agreed to undertake to minimize and mitigate for incidental take of the covered species to the maximum extent practicable. As described in the HCP, the Applicant anticipates that incidental take would not appreciably reduce the likelihood of the survival and recovery of these species in the wild.

3. *Project-Based Consultation*—Project-by-project consultations or ITPs. This alternative would require Oncor to seek authorization on a project-by-project basis to address incidental take resulting from their actions, as needed, through section 7 or under section 10(a)(1)(B).

Section 9 of the Act and its implementing regulations prohibit the ''taking'' of threatened and endangered species. However, under limited circumstances, we may issue permits to take listed wildlife species incidental to, and not the purpose of, otherwise lawful activities.

Reviewing Documents and Submitting Comments

You may obtain copies of the dEIS and dHCP by going to *http://www.fws.gov/southwest/es/AustinTexas/.* Alternatively, you may obtain compact disks with electronic copies of these documents by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; calling (512) 490–0057; or faxing (512) 490–0974. A limited number of printed copies of the dEIS and dHCP are also available, by request, from Mr. Zerrenner. Copies of the dEIS and dHCP are also available for public inspection and review at the following locations (by appointment only at government offices):

—Department of the Interior, Natural Resources Library, 1849 C. St., NW., Washington, DC 20240.

—U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 6034, Albuquerque, NM 87102.

—U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.

Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

Written comments may be submitted to Mr. Adam Zerrenner (see above). We will also accept written and oral comments at any of the nine public meetings (see **DATES**).

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority: We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2011–17811 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2011–N147; 1112–0000–81440–F2]

Francis Proposed Low-Effect Habitat Conservation Plan for the Morro Shoulderband Snail, Los Osos, San Luis Obispo County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Catherine M. and Ronald L. Francis (applicants) for a 5-year incidental take permit under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of the Federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) incidental to the construction and occupation of a single-family residence on a legal single-family-zoned parcel in the unincorporated community of Los Osos, San Luis Obispo County, California. The applicants would implement a conservation program to minimize and mitigate project activities as described in their low-effect habitat conservation plan. We invite comments from the public on the application, which includes the Francis Low-Effect Habitat Conservation Plan for the Morro Shoulderband Snail (HCP) that has been determined to be eligible for a Categorical Exclusion under the National Environmental Policy Act of 1969, as amended (NEPA).

DATES: To ensure consideration, please send your written comments by August 15, 2011.

ADDRESSES: You may download a copy of the HCP, draft Environmental Action Statement, Low-Effect Screening Form, and related documents on the Internet at *http://www.fws.gov/ventura/,* or you may request documents by U.S. mail or phone (see below). Please address written comments to Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Julie M. Vanderwier, Fish and Wildlife Biologist, at the above address or by calling (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Background

The Morro shoulderband (= banded dune) snail was listed by the U.S. Fish and Wildlife Service as endangered on December 15, 1994 (59 FR 64613). Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the Act to include the following activities: ''[T]o harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. ''Incidental Take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are, respectively, in the Code of Federal Regulations at 50 CFR 17.32 and 17.22. Issuance of an incidental take permit also must not jeopardize the existence of Federally listed fish, wildlife, or plant species.

However, take of listed plants is not prohibited under the Act unless such take would violate State law. As such, take of plants cannot be authorized under an incidental take permit. Plant species may be included on a permit in recognition of the conservation benefits provided them under a habitat conservation plan. All species included in the incidental take permit would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(55) and 17.32(b)(5)). In addition to meeting other criteria, actions undertaken through implementation of the HCP must not jeopardize the continued existence of Federally listed plant or animal species.

The applicants seek an incidental take permit for direct impacts to up to 0.57 acres (24,829 square feet) of highly disturbed coastal dune scrub and maritime chaparral occupied by Morro shoulderband snail in association with the construction and occupation of a single-family residence on an existing legal parcel. The project is proposed for a parcel legally described as Assessor Parcel Number 074–323–031 and located on the corner of Via Vistosa Drive and Bayview Heights Road in the southwestern portion of Los Osos, San Luis Obispo County, California. The applicants are requesting a permit for take of Morro shoulderband snail that would result from ''Covered Activities'' that include the construction and occupation of a single-family residence and associated landscaping/infrastructure.

The applicants propose to minimize and mitigate take of Morro shoulderband snail associated with the covered activities by fully implementing the plan. The following measures will be implemented to minimize the effects of the taking: (1) Pre-construction and concurrent construction monitoring surveys for Morro shoulderband snail will be conducted within the 0.57-acre parcel; (2) all identified individuals of Morro shoulderband snail will be relocated by an individual in possession of a current valid recovery permit for the species to a receptor site out of harm's way; (3) installation of protective fencing; and (4) development and presentation of a contractor and employee training program for Morro shoulderband snail. To mitigate for unavoidable take, the applicants will contribute $9,300 to an Impact-Directed Environmental Account held and administered by the National Fish and Wildlife Foundation. These funds will be used to implement recovery tasks

identified in the *Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California* (USFWS 1998). A total of $13,685 will be available to ensure that adequate funding is available to implement all of the minimization measures identified in the plan.

In the proposed HCP, the applicants consider two alternatives to the proposed action: ''No Project'' and ''Project Re-design.'' Under the ''No Project'' alternative, current conditions would be maintained, the HCP for Morro shoulderband snail would not be implemented and the Service would not issue an ITP. Under the ''Project Re-design'' alternative, a small area where vegetation is not as degraded would be conserved and placed in an open space easement intended to protect resource values. While this alternative could reduce take of the Morro shoulderband snail, it was not selected because the parcel is small, is located in a residential neighborhood, and contains only degraded, fragmented native habitat. The likely location for the conservation easement would be in the northern portion of the parcel; however, this area would likely serve as a sink for Morro shoulderband snails rather than contribute to their recovery.

We are requesting comments on our preliminary determination that the applicants' proposal will have a minor or negligible effect on the Morro shoulderband snail and that the plan qualifies as a low-effect HCP as defined by our Habitat Conservation Planning Handbook (November 1996). We base our determinations on three criteria: (1) Implementation of the proposed project as described in the HCP would result in minor or negligible effects on Federally listed, proposed, and/or candidate species and their habitats; (2) implementation of the HCP would result in minor negligible effects on other environmental values or resources; and (3) HCP impacts, considered together with those of other past, present, and reasonably foreseeable future projects, would not result in cumulatively significant effects. In our analysis of these criteria, we have made a preliminary determination that the approval of the HCP and issuance of an ITP qualify for categorical exclusions under the NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of Interior Manual (516 DM 2 Appendix 2 and 516 DM 8); however, based upon our review of public comments that we receive in response to this notice, this preliminary determination may be revised.

Next Steps

We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of Section 10(a) of the Act. We will also evaluate whether issuance of the ITP would comply with Section 7 of the Act by conducting an intra-Service Section 7 consultation for the plan. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP. If the requirements are met, we will issue an ITP to the applicants for the incidental take of Morro shoulderband snail. We will make the final permit decision no sooner than 30 days after the date of this notice.

Public Review

We provide this notice under section 10(c) of the Act and the NEPA public involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We are requesting comments on our determination that the applicants' proposal will have a minor or negligible effect on the Morro shoulderband snail and that the plan qualifies as a ''low-effect'' HCP as defined by our 1996 Habitat Conservation Planning Handbook. We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a) of the Act. We will also evaluate whether issuance of the section 10(a)(1)(B) permit would comply with section 7 of the Act by conducting intra-Service section 7 consultation for the plan. We will use the results of these consultations, in combination with the above findings, in our final analysis to determine whether or not to issue the permits. If the requirements are met, we will issue a permit to the applicants for the incidental take of Morro shoulderband snail. We will make the final permit decision no sooner than 30 days after the date of this notice.

Public Comments

If you wish to comment on the permit applications, plans, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

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

Authority: We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: July 11, 2011.

Diane K. Noda,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2011–17830 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2011–N146; 1112–0000–81440–F2]

Kellaway Proposed Low-Effect Habitat Conservation Plan for the Morro Shoulderband Snail, San Luis Obispo County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Thomas R. Kellaway and Doris J. Redmon (applicants) for a 5-year incidental take permit under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of the Federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) incidental to the construction and occupation of two single-family residences, one on each of two legal parcels occupied by the species in the community of Los Osos, San Luis Obispo County, California. The applicants would implement a conservation program to minimize and mitigate project activities as described in their low-effect habitat conservation plan (plan). We invite comments from the public on the application, which includes the Kellaway Low-Effect Habitat Conservation Plan for the Morro Shoulderband Snail (HCP), which has been determined to be eligible for a Categorical Exclusion under the National Environmental Policy Act of 1969, as amended (NEPA).

DATES: To ensure consideration, please send your written comments by August 15, 2011.

ADDRESSES: You may download a copy of the HCP, draft Environmental Action Statement, Low-Effect Screening Form,

and related documents on the Internet at *http://www.fws.gov/ventura/,* or you may request documents by U.S. mail or phone (see below). Please address written comments to Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Julie M. Vanderwier, Fish and Wildlife Biologist, at the above address or by calling (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Background

The Morro shoulderband (banded dune) snail was listed by the U.S. Fish and Wildlife Service as endangered on December 15, 1994 (59 FR 64613). Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the Act to include the following activities: ''[T]o harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532). However, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. ''Incidental Take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are, respectively, in the Code of Federal Regulations at 50 CFR 17.32 and 17.22. Issuance of an incidental take permit also must not jeopardize the existence of Federally listed fish, wildlife, or plant species.

However, take of listed plants is not prohibited under the Act unless such take would violate State law. As such, take of plants cannot be authorized under an incidental take permit. Plant species may be included on a permit in recognition of the conservation benefits provided them under a habitat conservation plan. All species included in the incidental take permit would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(55) and 17.32(b)(5)). In addition to meeting other criteria, actions undertaken through implementation of the HCP must not jeopardize the continued existent of Federally listed plant or animal species.

The applicants seek an incidental take permit for direct impacts to 1.68 acres of coastal dune scrub, maritime chaparral, and ruderal habitat occupied by Morro shoulderband snail in association with the construction and occupation of a single-family residence on each of two existing parcels. The project is proposed for separate legal parcels of 5.08 acres and 0.45 acre, legally described as Assessor Parcel Numbers 074–022–042 and 074–483–052, respectively. Both are located between Seahorse Lane and San Leandro Court in the southwestern portion of the unincorporated community of Los Osos, San Luis Obispo County, California. The applicants are requesting a permit for take of Morro shoulderband snail that would result from the ''Covered Activities'' that include the construction and occupation of two single-family residences and habitat enhancement activities.

The applicants propose to minimize, and mitigate take of Morro shoulderband snail associated with the covered activities by fully implementing the plan. The project was redesigned to reduce the impact footprint such that known locations of live Morro shoulderband snail could be avoided. The following measures will be implemented to minimize the effects of the taking: (1) Pre-construction and construction monitoring surveys for Morro shoulderband snail will be conducted within the 1.68-acre impact area, (2) all identified individuals of Morro shoulderband snail will be relocated by an individual in possession of a current valid recovery permit for the species into the conservation easement area out of harm's way, (3) installation of protective fencing, and (4) development and presentation of a contractor and employee training program for Morro shoulderband snail. The following measures will be implemented to mitigate for unavoidable take: (1) Preservation in perpetuity of 3.83 acres of coastal dune scrub and maritime chaparral habitats occupied by Morro shoulderband snail in a conservation easement that will preclude any use not consistent with resource management, (2) enhancement of 0.24 acres of disturbed coastal dune scrub within the conservation easement to increase its value and function for Morro shoulderband snail, and (3) post-construction monitoring and maintenance of the habitat enhancement activities within conservation easement area for a period of 4 years to ensure its success. A Letter of Credit in the amount of $16,740 will be established to ensure that adequate funding is available to implement all of the minimization and mitigation measures contained in the plan.

In the proposed HCP, the applicants consider two alternatives to the proposed action: ''No Action'' and ''Alternate Design.'' Under the ''No Action'' alternative, current conditions would be maintained, the HCP for Morro shoulderband snail would not be implemented, and the Service would not issue an ITP. Under the ''Alternate Design'' alternative, the project would be redesigned to reduce take. Because the entire property contains coastal scrub that provides habitat for Morro shoulderband snail, it is not feasible to design the project to avoid take. Further reducing the footprint of the houses would not meet the client's needs and would not significantly reduce impacts to the species. For these reasons, this redesign alternative has been rejected.

We are requesting comments on our preliminary determination that the applicants' proposal will have a minor or negligible effect on the Morro shoulderband snail and that the plan qualifies as a low-effect HCP as defined by our Habitat Conservation Planning Handbook (November 1996). We base our determinations on three criteria: (1) Implementation of the proposed project as described in the HCP would result in minor or negligible effects on Federally listed, proposed, and/or candidate species and their habitats; (2) implementation of the HCP would result in minor negligible effects on other environmental values or resources; and (3) HCP impacts, considered together with those of other past, present, and reasonably foreseeable future projects, would not result in cumulatively significant effects. In our analysis of these criteria, we have made a preliminary determination that the approval of the HCP and issuance of an ITP qualify for categorical exclusions under the NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of Interior Manual (516 DM 2 Appendix 2 and 516 DM 8); however, based upon our review of public comments that we receive in response to this notice, this preliminary determination may be revised.

Next Steps

We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of Section 10(a) of the Act. We will also evaluate whether issuance of the ITP would comply with Section 7 of the Act by conducting an intra-Service Section 7 consultation for the plan.

Public Review

We provide this notice under section 10(c) of the Act and the NEPA public involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We are requesting comments on our determination that the applicants' proposal will have a minor or negligible effect on the Morro shoulderband snail and that the plan qualifies as a ''low-effect'' HCP as defined by our Habitat Conservation Planning Handbook (November 1996). We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a) of the Act. We will use the results of our intra-Service consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the permits. If the requirements are met, we will issue a permit to the applicants for the incidental take of Morro shoulderband snail. We will make the final permit decision no sooner than 30 days after the date of this notice.

Public Comments

If you wish to comment on the permit applications, plans, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

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

Authority: We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: July 11, 2011.

Diane K. Noda,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2011–17829 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Higher Education Grant Program Application; Request for Comments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Education (BIE) is seeking comments on renewal of Office of Management and Budget (OMB) approval for the collection of information for the Higher Education Grant Program Application. The information collection is currently authorized by OMB Control Number 1076–0101, which expires November 30, 2011.

DATES: Interested persons are invited to submit comments on or before *September 13, 2011.*

ADDRESSES: You may submit comments on the information collection to Brandi Sweet, U.S. Department of the Interior, Bureau of Indian Education, 1849 C Street, NW., MS–4141, Washington, DC 20240, fax (202) 208–3312; e-mail: *Brandi.Sweet@bie.edu.*

FOR FURTHER INFORMATION CONTACT: Brandi Sweet, U.S. Department of the Interior, Bureau of Indian Education. Telephone (202) 208–5504.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Education (BIE) is seeking renewal of the approval for the information collection conducted under 25 CFR Part 40, requiring prospective students to provide certain information to allow BIE to make a determination in the eligibility of an applicant for funding. This information is collected on a grant application form. This renewal does not include any change to the form or burden hours.

II. Request for Comments

The Bureau of Indian Education requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and costs) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. This information collection expires November 30, 2011.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, telephone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0101.

Title: Higher Education Grant Application, 25 CFR part 40.

Brief Description of Collection: Submission of this information allows respondents receiving a benefit to annually complete the form to demonstrate unmet financial need for consideration of a grant. Response is required to obtain a benefit.

Type of Review: Extension without change of a currently approved collection.

Respondents: Students through the tribally controlled institutions of higher education.

Number of Respondents: 14,000 per year, on average.

Frequency of Response: Once per year.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden: 14,000 hours.

Dated: July 6, 2011.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. 2011–17792 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVE03000 L12200000.DU0000.241A; 11–08807; MO# 4500018892; TAS:14X1109]

Notice of Intent To Prepare an Amendment to the 1985 Wells Resource Management Plan for Recreation in the Spruce Mountain Area and Associated Environmental Assessment, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Wells Field Office, Elko, Nevada, is proposing to amend the 1985 Wells Resource Management Plan (RMP) for recreation in the Spruce Mountain Area and prepare an associated Environmental Assessment (EA). By this notice, the BLM is announcing the beginning of the scoping process to solicit public comments and identify issues associated with this proposed action.

DATES: This notice initiates the public scoping process for the amendment to the Wells RMP and associated EA. Comments on issues may be submitted until August 29, 2011. The date(s) and location(s) of any scoping meeting(s) to be held within the 45-day scoping period, will be announced at least 30 days in advance through local news media outlets, mailings to interested individuals, and on the BLM Elko Web site at: *http://www.blm.gov/nv/st/en/fo/elko_field_office.html.* The BLM will provide additional opportunities for public participation and comment upon publication of the EA. Comments may be submitted in writing to the address listed below. Associated planning documents may be viewed on the BLM Elko Web site, or may be requested in a printed or electronic copy format by contacting the Wells Field Office at the address and phone number listed below.

ADDRESSES: You may submit comments on issues and planning criteria related to the proposed amendment to the Wells RMP and associated EA by any of the following methods:

- *E-mail: spruce_wells_EA@blm.gov.*
- *Fax:* (775) 753–0255.
- *Mail:* Bureau of Land Management, Spruce Mountain Area Planning, Wells Field Office, 3900 E. Idaho Street, Elko, Nevada 89801.

Documents pertinent to this proposal may be examined at the Elko District Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to a mailing list contact Tamara Hawthorne, Outdoor Recreation Planner, BLM, 3900 E. Idaho Street, Elko, NV 89801, phone (775) 753–0356, or e-mail *tamara_hawthorne@blm.gov.* 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 plan amendment and associated EA will address recreation management in the Spruce Mountain Area, which encompasses 464,217 acres of public land that is within the Nevada Department of Wildlife Hunt Unit 105. The BLM proposes to change the off-highway vehicle (OHV) designation within the Spruce Mountain Area from the existing ''open'' designation of unrestricted cross-country travel for OHV use to a ''limited'' OHV designation. A total of 1,799 miles of roads have been inventoried within the Spruce Mountain Area. A designation for OHV use in the area would be limited to only those routes that are designated through this process, but could include the following types of limitations: Mode of travel, time or season of use, vehicle type, and administrative use. A Notice of Travel Restriction to Off Road Vehicles is in effect for this area until new land use planning is completed and a record of decision is issued (71 FR 77:20725, April 21, 2006). The BLM is also proposing to designate the Spruce Mountain Area as an Extensive Recreation Management Area (ERMA), which will also be evaluated in the EA. Management actions in an ERMA would allow for motorized and non-motorized recreation opportunities, while also interpreting and protecting valuable cultural sites; protecting crucial mule deer and sage grouse habitat; and providing for visitor health and safety. The environmental analysis will include other recreation management issues that relate to cultural, historic, and wildlife resources.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EA. At present, the BLM has identified the following issues: Recreation; historic mining sites; wildlife habitat fragmentation; abandoned mine lands; public safety; and existing grazing uses.

The BLM will use and coordinate the NEPA process with the public involvement process under Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American Tribal consultations will be conducted in accordance with policy, and Tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, state, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Rangeland management, minerals and geology, forestry, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology and economics.

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

Authority: 40 CFR 1501.7 and 43 CFR 1610.2

Bryan K. Fuell,

Manager, Wells Field Office.

[FR Doc. 2011–17787 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD0500, L51010000.LVRWB11B4500.FX0000]

Notice of Intent To Prepare an Environmental Impact Statement for the enXco Development Corporation's Tylerhorse Wind Project, Kern County, CA, and Possible Land Use Plan Amendment; CACA 51561

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Ridgecrest Field Office, Ridgecrest, California, intends to prepare an Environmental Impact Statement (EIS), which may include an amendment to the California Desert Conservation Area (CDCA) Plan (1980, as amended), related to Power Partners Southwest, LLC's (Applicant or Power Partners) right-of-way (ROW) authorization request for the Tylerhorse Wind Project (Project), a 60-megawatt (MW) wind farm. By this notice the BLM is announcing the beginning of the scoping process to identify issues and solicit public comments on the EIS and proposed plan amendment (PA). By this notice the BLM is also segregating, subject to valid existing rights, approximately 1,200 acres of public lands from appropriation under the public land laws, including the Mining Law of 1872, as amended, but not from leasing under the mineral leasing laws or disposal under the mineral material laws, for a period of 2 years from the date of publication of this notice for the purpose of processing Power Partner's ROW authorization request.

DATES: This notice initiates: (1) The public scoping process for the EIS and possible plan amendment, and (2) the 2 year segregation period for the public lands within the Project application area. Comments on issues related to the EIS and possible plan amendment may be submitted in writing until August 15, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the BLM Web site at: *http://www.blm.gov/ca/st/en/fo/cdd.html.* In order to be considered in the Draft PA/EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS. The segregation of the public lands is effective as of July 15, 2011. The segregation will terminate when one of the following events occurs: (1) The BLM issues a decision granting, granting with modifications, or denying Power Partners' ROW authorization request; (2) publication of a **Federal Register** notice terminating this segregation; or (3) if no further administrative action occurs at the end of this segregation on July 15, 2013.

ADDRESSES: You may submit comments on issues and planning criteria related to the Tylerhorse Wind Project by any of the following methods:

- Web site: *http://www.blm.gov/ca/st/en/fo/cdd.html.*
- E-mail: *catylerhorse@blm.gov.*
- Fax: (951) 697–5299.
- Mail: ATTN: Cedric Perry, BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046.

Documents pertinent to this proposal may be examined at the California Desert District office at the address above.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Cedric Perry, telephone (951) 697–5388; address BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046; e-mail *catylerhorse@blm.gov.* 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: EnXco, through its wholly owned subsidiary Power Partners, has submitted a ROW application requesting authorization to construct, operate, maintain, and decommission the Tylerhorse 60–MW wind farm facility. The proposed project is located on public lands in Kern County approximately 15 miles west of California State Highway 14, 12 miles south of California State Highway 58, and 8 miles north of State Route 138. The proposed project would include 34 wind turbines, access roads, and a 34.5 kV energy collection line on 1,100 acres of BLM-administered lands. Ancillary facilities would be located on the adjacent PdV/Manzana (PdV) project that was approved on private lands by the Kern County Board of Supervisors on July 29, 2008, and is currently under construction. Additional roads, transmission lines, and other facilities including substations, operations and maintenance facilities, batch plants, and temporary laydown yards would be provided by the PdV project.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the PA/EIS. At present, the BLM has identified the following preliminary issues: Air quality and greenhouse gas emissions; biological resources, including special status species, Golden Eagles and California Condors; cultural resources; geology and soils; hazards and hazardous materials; hydrology and water quality; land use, noise; recreation; traffic; wilderness characteristics; visual resources; and areas with high potential for renewable energy development.

Pursuant to the CDCA Plan, sites associated with power generation or transmission not identified in the CDCA Plan will be considered through the plan amendment process to determine the suitability of the sites for renewable energy development. Since the Project site was not previously identified as suitable, authorization of the Tylerhorse project would require an amendment to the CDCA Plan. By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to land use plans, predicated on the findings in the EIS. If a land use plan amendment is necessary, the BLM would integrate the land use planning process with the NEPA process for the Project. A preliminary list of potential planning criteria that will be used to help guide and define the scope of the plan amendment process include:

- The plan amendments will be completed in compliance with FLPMA, NEPA, and all other relevant Federal laws, executive orders, and BLM policies;
- Existing, valid plan decisions will not be changed and any new plan decisions will not conflict with existing plan decisions; and
- The plan amendments will recognize valid existing rights.

The BLM will also use and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f) as provided for in 36 CFR 800.2(d)(3). Native American Tribal consultations will be conducted and tribal concerns will be given due consideration,

including impacts on Indian trust assets. Federal, State, and local agencies, along with Tribes and other stakeholders that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency. In connection with its processing of Power Partners' application, the BLM is also segregating, under the authority contained in 43 CFR 2091.3–1(e) and 43 CFR 2804.25(e), subject to valid existing rights, the public lands within the Tylerhorse application area from appropriation under the public land laws including the Mining Law of 1872, as amended, but not the Mineral Leasing or the Material Sales Acts, for a period of 2 years from the date of publication of this notice. The public lands contained within this segregation are described as follows:

San Bernardino Meridian

Township 10 North, Range 15 West,
Section 24;
Section 26, lots 1 to 8, inclusive; and
Section 28, lot 1 and SW¼; SE¼.

Containing 1,200.29 acres more or less, Kern County.

The BLM has determined that this segregation is necessary to ensure the orderly administration of the public lands by maintaining the status quo while it processes Power Partners' ROW application for the above described lands. The segregation period will terminate and the lands will automatically reopen to appropriation under the public land laws, including the Mining Law, if one of the following events occurs: (1) The BLM issues a decision granting, granting with modifications, or denying Power Partners' ROW application request; (2) publication of a **Federal Register** notice terminating this segregation; or (3) if no further administrative action occurs at the end of this segregation. Any segregation made under this authority is effective only for a period of up to 2 years.

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

Authority: 40 CFR 1501.7; 43 CFR 1610.2, 2091.3–1(e), and 2804.25(e).

James W. Keeler,

Acting Deputy State Director, California.

[FR Doc. 2011–17720 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD07000, L51010000.FX0000.LVRWB10B4050]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Ocotillo Sol Solar Project, Imperial County, CA; Possible Land Use Plan Amendment; and Notice of Segregation of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 as amended (NEPA), and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) El Centro Field Office, El Centro, California, intends to prepare an Environmental Impact Statement (EIS), which may include an amendment to the California Desert Conservation Area (CDCA) Plan, related to San Diego Gas & Electric's (SDG&E) right-of-way (ROW) authorization request for the Ocotillo Sol Solar Energy Facility (Project), a 15–18 megawatt (MW) solar energy facility. By this notice, the BLM is announcing the beginning of the scoping process to solicit public comments and identify issues related to the EIS and proposed plan amendment. By this notice, the BLM is also segregating, subject to valid existing rights, approximately 240 acres of public lands located in the State of California from appropriation under the public land laws, including the Mining Law of 1872, as amended, but not the Mineral Leasing or Material Sales Acts, for a period of 2 years for the purpose of processing SDG&E's ROW authorization request.

DATES: This notice initiates: (1) The public scoping process for the EIS and (2) the 2 year segregation period for the public lands within the Project's ROW application area, effective as of July 15, 2011. Comments on issues related to the EIS may be submitted in writing until August 15, 2011. The BLM expects to hold two public meetings during the formal scoping period in El Centro, California, the dates and locations of which will be announced at least 15 days in advance through local media, newspapers, mailings, and the BLM California Desert District Web site (*http://www.blm.gov/ca/st/en/fo/cdd.html*). In order to be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS. The segregation of the public lands is effective as of July 15, 2011. The segregation will terminate if one of the following events occurs: (1) The BLM issues a decision granting, granting with modifications, or denying SDG&E's ROW authorization request; (2) publication of a **Federal Register** notice terminating this segregation; or (3) if no further administrative action occurs at the end of this segregation on July 15, 2013.

ADDRESSES: You may submit comments related to the Ocotillo Sol Solar Project by any of the following methods:

- *Mail:* Noel Ludwig, California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553.
- *E-mail: ocotillosol@blm.gov.*
- *Fax:* (951) 697–5299, Attn: Noel Ludwig.

Documents pertinent to this project proposal may be examined at the BLM California Desert District Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Noel Ludwig, BLM project manager, telephone (951)–697–5368; address California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553; e-mail *ocotillosol@blm.gov.* 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: SDG&E has submitted a ROW application requesting authorization to construct, operate, maintain, and decommission the Ocotillo Sol Project on BLM-administered public lands in southwest Imperial County, California. The BLM is responding to SDG&E's application as required by FLPMA. The project would be constructed on an approximately 100 acre site located approximately 8 miles southwest of El Centro, 4 miles south of Interstate 8, and 82 miles east of San

Diego. An additional 15 acres would be temporarily disturbed during construction.

The Project would be a 15 to 18 MW (with peak capacity of 20 MW) project and would include photo-voltaic (PV) arrays, inverters, transformers, and a maintenance building. The project would connect to the existing SDG&E Imperial Valley Substation (IVS), which is located to the Project's immediate north via a buried 12.47 kilovolt cable. The project would not require any expansion of the IVS, nor any upgrades to the existing transmission lines exiting the substation.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues: Air quality, biological resources, cultural resources, water resources, geological resources and hazards, land use, noise, paleontological resources, socioeconomics, traffic and transportation, and visual resources. An updated inventory of wilderness characteristics will be used to determine whether lands with wilderness characteristics are present in the project area and to analyze impacts associated with these resources.

Pursuant to the CDCA Plan, sites associated with power generation or transmission not identified in the CDCA Plan will be considered through the plan amendment process to determine the suitability of the sites for renewable energy development. Since the Project site was not previously identified as suitable, authorization of the Project would require amendment of the CDCA Plan. By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to land use plans predicated on the findings in the EIS. If a Plan Amendment is necessary, the BLM will integrate the land use planning process with the NEPA process for the Project. A preliminary list of the potential planning criteria that will be used to help guide and define the scope of the plan amendment process include:

- The plan amendments will be completed in compliance with FLPMA, NEPA, and all other relevant Federal laws, executive orders, and BLM policies;
- Existing, valid plan decisions will not be changed and any new plan decisions will not conflict with existing plan decisions; and
- The plan amendment(s) will recognize valid existing rights.

The BLM will also use and coordinate the NEPA commenting process to help fulfill the public involvement process under Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f) as provided for in 36 CFR 800.2(d)(3). Native American Tribal consultations will be conducted in accordance with policy, and Tribal concerns will be given due consideration. Federal, State, and local agencies, along with Tribes and other stakeholders that may be interested or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as cooperating agencies.

In connection with its processing of SDG&E's application, the BLM is also segregating, under the authority contained in 43 CFR 2091.3–1(e) and 2804.25(e), subject to valid existing rights, the public lands within the Project application area from appropriation under the public land laws, including the Mining Law of 1872, as amended, but not the Mineral Leasing the Material Sales Acts, for a period of 2 years from the date of publication of this notice. The public lands contained within this temporary segregation total approximately 240 acres and are described as follows:

San Bernardino Meridian

T. 16½ S., R. 12 E.,
Sec. 3, E½SW¼, SE¼.

The BLM has determined that this temporary segregation is necessary to ensure the orderly administration of the public lands by maintaining the status quo while it processes SDG&E's ROW application for the above described lands. The segregation period will terminate and the lands will automatically reopen to appropriation under the public land laws, including the Mining Law, if one of the following events occurs: (1) The BLM issues a decision granting, granting with modifications, or denying SDG&E's ROW application; (2) publication of a **Federal Register** notice terminating this segregation; or (3) there is no further administrative action at the end of the segregation provided for in the **Federal Register** notice initiating the segregation, whichever occurs first. Any segregation made under this authority is effective only for a period of up to 2 years.

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

Authority: 40 CFR 1501.7; 43 CFR 1610.2, 2091.3–1(e), and 2804.25(e).

Thomas Pogacnik,

Deputy State Director, California.

[FR Doc. 2011–17718 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD05000, L51010000.LVRWB11B4520.FX0000]

Notice of Intent To Prepare a Joint Environmental Impact Statement and Environmental Impact Report for the Proposed Alta East Wind Project, and Possible Land Use Plan Amendment, Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the Federal Land Policy and Management Act of 1976, as amended (FLPMA), and the California Environmental Quality Act, the Bureau of Land Management (BLM) Ridgecrest Field Office, Ridgecrest, California, together with the County of Kern, California, intend to prepare a joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR), which may include an amendment to the California Desert Conservation Area (CDCA) Plan (1980 as amended), related to Alta Windpower Development LLC's (Applicant or AWD) right-of-way (ROW) authorization request for the Alta East Wind Project (Project), a 300-megawatt (MW) wind farm. By this notice BLM and Kern County are announcing the beginning of the scoping process to identify issues and solicit public comments on the EIS/EIR and proposed plan amendment. By this notice the BLM is also segregating, subject to valid existing rights, approximately 2,083 acres of public lands from appropriation under the public land laws, including the Mining Law of 1872, as amended, but not from leasing under the mineral leasing laws or disposal under the mineral material laws, for a period of 2 years from the date of publication of this notice for the purpose of processing AWD's ROW authorization request.

DATES: This notice initiates: (1) The public scoping process for the EIS/EIR and possible plan amendment; and (2) the 2 year segregation period for the public lands within the AWD ROW application area. Comments on issues related to the EIS and possible plan amendment may be submitted in writing until August 15, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the BLM Web site at: *http://www.blm.gov/ca/st/en/fo/cdd.html.* In order to be fully addressed in the Draft EIS/EIR, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS/EIR. The segregation of the public lands is effective as of July 15, 2011. The segregation will terminate if one of the following events occurs: (1) The BLM issues a decision granting, granting with modifications, or denying AWD's ROW authorization request; (2) publication of a **Federal Register** notice terminating this segregation; or (3) no further administrative action occurs before the end of this segregation on July 15, 2013.

ADDRESSES: You may submit comments on issues and alternatives related to the Alta East Wind Project Draft EIS/EIR and CDCA Plan amendment by any of the following methods:

- Web site: *http://www.blm.gov/ca/st/en/fo/cdd.html.*
- E-mail: *altaeast@blm.gov.*
- Fax: (951) 697–5299.
- Mail: ATTN: Jeffery Childers, Project Manager, BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046.

Documents pertinent to this proposal may be examined at the BLM California Desert District Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Jeffery Childers; telephone (951) 697–5308; address BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046; e-mail *jchilders@blm.gov.* 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: AWD has requested a ROW authorization to construct, operate, maintain, and decommission the 300–MW Alta East Project. The Project is proposed to be located on approximately 3,200 acres on the north and south sides of State Route 58 in southeastern Kern County, California. The proposed Project area is approximately 3 miles northwest of the Town of Mojave and approximately 11 miles east of the City of Tehachapi. The project would include wind turbines, access roads, and energy collection lines on 3,200 acres, of which 2,083 acres are on public land under the jurisdiction of the BLM and 1,117 acres of private land under the jurisdiction of Kern County. Approximately 681 acres would need to be re-zoned to be consistent with the Kern County Zoning Ordinance Wind Energy (WE) Combining District. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the Draft EIS/EIR and CDCA Plan amendment. At present, the BLM has identified the following preliminary issues: Air quality and greenhouse gas emissions, biological resources including special status species, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use, noise, recreation, traffic, visual resources, lands with wilderness characteristics, cumulative effects, and areas with high potential for renewable energy development. Pursuant to the CDCA Plan, sites associated with power generation or transmission not identified in the CDCA Plan will be considered through the plan amendment process to determine the suitability of the sites for renewable energy development. Since the proposed Project site was not previously identified as suitable, authorization of the Project will require amendment of the CDCA Plan. By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to land use plans predicated on the findings in the EIS/EIR. If a land use plan amendment is necessary, the BLM will integrate the land use planning process with the NEPA process for the project. A preliminary list of the potential planning criteria that will be used to help guide and define the scope of the plan amendment process include:

- The plan amendments will be completed in compliance with the FLPMA, NEPA, and all other relevant Federal laws, executive orders, and BLM policies;
- Existing, valid plan decisions will not be changed and any new plan decisions will not conflict with existing plan decisions; and
- The plan amendment(s) will recognize valid existing rights.

The BLM will also use and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f) as provided for in 36 CFR 800.2(d)(3). Native American tribal consultations will be conducted in accordance with policy and tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

In connection with its processing of AWD's application, the BLM is also segregating, under the authority contained in 43 CFR 2091.3–1(e) and 43 CFR 2804.25(e), subject to valid existing rights, the public lands within the Project application area from appropriation under the public land laws including the Mining Law of 1872, as amended, but not the Mineral Leasing or the Material Sales Acts, for a period of 2 years from the date of publication of this notice. The public lands contained within this temporary segregation total approximately 2,083 acres and are described as follows:

Mount Diablo Meridian

T. 32 S., R. 35 E.,
Sec. 26, SW¼ and W½SE¼;
Secs. 28, 32, and 34; and

San Bernardino Meridian

T. 12 N., R. 13 W.,
sec. 34.

The areas described aggregate approximately 2,083 acres in Kern County.

The BLM has determined that this temporary segregation is necessary to ensure the orderly administration of the public lands by maintaining the status quo while it processes AWD's ROW application for the above described lands. The temporary segregation period will terminate and the lands will automatically reopen to appropriation under the public land laws, including the Mining Law, if one of the following events occurs: (1) The BLM issues a decision granting, granting with modifications, or denying AWD's ROW

authorization request; (2) Publication in the **Federal Register** of a notice terminating this segregation; or (3) No further administrative action occurs at the end of this segregation. Any segregation made under this authority is effective only for a period of up to 2 years.

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

Authority: 40 CFR 1501.7; 43 CFR 1610.2, 2091.3–1(e), and 2804.25(e)).

Thomas Pogacnik,

Deputy State Director, California.

[FR Doc. 2011–17717 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM01000 L16100000 DO0000]

Notice of Intent To Prepare a Resource Management Plan Amendment for the Glade Run Recreation Area, Farmington Field Office, New Mexico, and Associated Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Farmington Field Office (Field Office), Farmington, New Mexico, intends to prepare a Resource Management Plan (RMP) amendment to the 2003 Farmington RMP with an associated Environmental Assessment (EA) to address recreation and travel management in the Glade Run Recreation Area (the Glade). By this Notice, the Field Office is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This Notice initiates the public scoping process for the RMP amendment/EA. Comments on issues and planning criteria may be submitted 30 days from the date of publication of this Notice in the **Federal Register** (the scoping period). The date(s) and location(s) of any scoping meeting(s) will be announced at least 15 days in advance through the local news media, mailings to interested individuals, and on the BLM Field Office Web site at: *http://www.blm.gov/nm/st/en.html.* In order to be included in the Draft RMP amendment/EA, all comments must be received prior to the close of the scoping period or 30 days after the last public meeting, whichever is later.

The BLM will provide additional opportunities for public participation and comment upon publication of the Draft RMP amendment/EA.

ADDRESSES: You may submit comments on issues and planning criteria related to the Farmington Field Office Glade Run Recreation Area RMP amendment/EA by any of the following methods:

- *Web site: http://www.blm.gov/nm/st/en.html.*
- *E-mail: FFO_Comments@blm.gov.*
- *Fax:* 505–599–8999 Attention: Outdoor Recreation Planner.
- *Mail:* 1235 La Plata Highway, Farmington, New Mexico 87401, Attention: Outdoor Recreation Planner.

Public comments, maps and other information related to the Glade RMP amendment/EA may be examined at the Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Janelle Alleman, Outdoor Recreation Planner, telephone: 505–599–8944; address: 1235 La Plata Highway, Farmington, New Mexico 87401; or by e-mail at *FFO_Comments@blm.gov.* 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: The BLM Farmington Field Office, Farmington, New Mexico, intends to prepare an RMP amendment/EA to address recreation and travel management decisions in the Glade. The Glade encompasses 21,544 acres of which 17,935 acres are Federal lands. The remaining acres consist of State of New Mexico and private lands. The planning area is located in San Juan County, New Mexico. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the RMP amendment/EA, including alternatives, and will help to guide the planning process.

New forms of motorized vehicles and technology, population growth, increasing user conflicts, and related developments have out-paced guidance and decisions in the current recreation and travel management plan for the Glade, which was approved in 1996. To address these developments, the RMP amendment/EA will consider proposals to amend the RMP to make changes in off-highway vehicle (OHV) area designations (43 CFR 8342.2). OHV area designations are land use allocations that classify areas of public lands as open, limited, or closed to motorized travel. The RMP amendment/EA will also consider a proposal to designate the Glade as a Special Recreation Management Area (SRMA). SRMA designations recognize specified public lands where recreation opportunities and recreation settings are the predominant land use planning focus and are managed through the land use planning process.

In addition, this planning effort will develop management alternatives that include specific activity planning targeted at identifying a travel and transportation network of routes for specified uses within the planning area.

The BLM anticipates the following planning issues (43 CFR 1610.2(c)(3)): (1) How to best address conflicts between recreational users? (2) What is an appropriate balance in providing for the different kinds of recreation uses and opportunities? (3) Is there an opportunity for a Recreation & Public Purpose lease within the planning area? and (4) How can BLM best promote and address public safety?

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Rangeland management, minerals and geology, forestry, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology, and economics.

Proposed planning criteria include the following:

1. The RMP amendment/EA will comply with FLPMA, NEPA, and all other applicable laws, regulations, and policies;

2. For program-specific guidance for decisions at the land use planning level, the process will follow the BLM's policies in the Land Use Planning Handbook, H–1601–1;

3. Public participation and collaboration will be an integral part of the planning process;

4. The BLM will strive to make decisions in the plan compatible with the existing plans and policies of adjacent local, State, and Federal agencies and local American Indian tribes, as long as the decisions are consistent with the purposes, policies, and programs of Federal laws and regulations applicable to public lands;

5. The RMP amendment/EA will recognize valid existing rights;

6. The RMP amendment/EA will incorporate, where applicable, management decisions brought forward from existing planning documents;

7. The BLM staff will work with cooperating agencies and all other interested groups, agencies, and individuals;

8. The BLM and cooperating agencies will jointly develop alternatives for resolution of resource management issues and management concerns;

9. GIS and metadata information will meet Federal Geographic Data Committee standards, as required by Executive Order 12906 and all other applicable BLM data standards will be followed;

10. The planning process will provide for ongoing consultation with American Indian tribes to identify strategies for protecting recognized traditional uses;

11. Planning and management direction will focus on the relative values of resources and not the combination of uses that will give the greatest economic return or economic output;

12. The BLM will consider the quantity and quality of non-commodity resource values;

13. Where practicable and timely for the planning effort, the best available scientific information, research, and new technologies will be used;

14. Actions must comply with all applicable regulations and must be reasonable, achievable, and allow for flexibility while supporting adaptive management principles; and

15. The Economic Profile System will be used as one source of demographic and economic data for the planning process, which will provide baseline data and contribute to estimates of existing and projected social and economic conditions.

The BLM will utilize and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American tribal consultations will be conducted in accordance with policy, and tribal concerns will be given due consideration, including concerns related to impacts on Indian trust assets. Federal, State, tribal and local agencies, along with stakeholders, are invited to participate in the scoping process and, if eligible, may participate as a cooperating agency.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods set forth in the **ADDRESSES** section of this Notice, and within the timeframes set forth in the **DATES** section of this Notice. Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7, 43 CFR 1610.2.

Jesse J. Juen,

Acting State Director.

[FR Doc. 2011–17776 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–VB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000 L14200000.BJ0000 241A; 11–08807; MO#4500022198; TAS: 14X1109]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Dates:* Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of Geographic Sciences, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 775–861–6541. 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:

1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on February 15, 2011:

The plat, representing the dependent resurvey of a portion of the subdivisional lines, a portion of the subdivision-of-section lines of section 27 and a portion of the meanders of Lake Tahoe, and the further subdivision of section 27, Township 15 North, Range 18 East, Mount Diablo Meridian, Nevada, under Group No. 883, was accepted on February 11, 2011. This survey was executed to meet certain administrative needs of the U.S. Forest Service.

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on April 21, 2011:

The plat, representing the dependent resurvey of the Fifth Standard Parallel South, through a portion of Range 54 East and a portion of the subdivisional lines, and the subdivision of section 34, Township 20 South, Range 54 East, Mount Diablo Meridian, Nevada, under Group No. 897, was accepted on April 19, 2011. This survey was executed to meet the certain administrative needs of the Bureau of Land Management.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on May 9, 2011:

The plat, in six (6) sheets, representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, the subdivison of certain sections, and the survey of the meanders of portions of the 4144 foot contour line, Township 33 North, Range 33 East, of the Mount Diablo Meridian, Nevada, under Group No. 888, was accepted on April 19, 2011. This survey was executed to meet certain administrative needs of the Pershing County Water Conservation District, the State of Nevada and the Bureau of Reclamation.

4. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on May 31, 2011:

The plat, in two (2) sheets, representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 8, and a metes-and-bounds survey in section 8, Township 14 North, Range 20 East, Mount Diablo Meridian, Nevada, under Group No. 903, was accepted on May 27, 2011. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

6. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on June 16, 2011:

The plat, representing the dependent resurvey of a portion of the subdivisional lines and a portion of Mineral Survey No. 4025, and the subdivision of section 12 and a metes-and-bounds survey of Parcel A in section 12, Township 36 North, Range 37 East, Mount Diablo Meridian, Nevada, under Group No. 792, was accepted on June 14, 2011. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

7. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada on June 23, 2011:

The plat, in two (2) sheets, representing the dependent resurvey of the First Standard Parallel South through a portion of Range 70 East, portions of the east boundary and a portion of the subdivisional lines, the subdivision of sections 1 and 12 and a metes-and-bounds survey in section 1, Township 5 South, Range 70 East, of the Mount Diablo Meridian, Nevada, under Group 868, was accepted on June 21, 2011.

The plat, in two (2) sheets, representing the dependent resurvey of a portion of the subdivisional lines and a metes-and-bounds survey through sections 6 and 7, Township 5 South, Range 71 East, of the Mount Diablo Meridian, Nevada, under Group No. 868, was accepted on June 21, 2011. These surveys were executed to meet certain administrative needs of the State of Nevada.

The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the Bureau of Land Management, Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: July 7, 2011.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 2011–17826 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–11–L19100000–BJ0000–LRCME0G03219]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on August 15, 2011.

DATES: Protests of the survey must be filed before August 15, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov.* 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 survey was executed at the request of the Director, Bureau of Indian Affairs, Great Plains Region, Aberdeen, South Dakota and was necessary to determine boundaries of individual and tribal trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 152 N., R. 64 W.

The plat, in one sheet, representing the dependent resurvey of a portion of the subdivisional lines, and a portion of the subdivision of section 19, and the subdivision of section 19, Township 152 North, Range 64 West, Fifth Principal Meridian, North Dakota, was accepted June 29, 2011.

We will place a copy of the plat, in one sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–17810 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW140216]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW140216, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from USA Exploration & Production LLC for competitive oil and gas lease WYW140216 for land in Converse and Campbell Counties, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. 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: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral

Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW140216 effective December 1, 2010, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–17723 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW143524]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW143524, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from USA Exploration & Production LLC for competitive oil and gas lease WYW143524 for land in Campbell County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. 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: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW143524 effective December 1, 2010, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–17722 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW143519]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW143519, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from USA Exploration & Production LLC for competitive oil and gas lease WYW143519 for land in Campbell County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. 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: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW143519 effective December 1, 2010, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–17714 Filed 7–14–11; 8:45 am]

BILLING CODE 4310–22–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–740]

In the Matter of Certain Toner Cartridges and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Granting Complainant's Motion for Summary Determination of Violation of Section 337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 26) granting complainant's motion for summary determination of violation of Section 337 in Inv. No. 337–TA–740, *Certain Toner Cartridges and Components Thereof.*

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 12, 2010, based on a complaint filed by Lexmark

International, Inc. of Lexington, Kentucky (''Lexmark''). 75 FR. 62564–65 (Oct. 12, 2010). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''Section 337''), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain toner cartridges and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 5,337,032; 5,634,169; 5,758,233; 5,768,661; 5,802,432; 5,875,378; 6,009,291; 6,078,771; 6,397,015; 6,459,876; 6,816,692; 6,871,031; 7,139,510; 7,233,760; and 7,305,204. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named as respondents Ninestar Image Int'l, Ltd. of Guangdong, China; Seine Image International Co. Ltd. of New Territories, Hong Kong; Ninestar Technology Company, Ltd. of Piscataway, New Jersey; Ziprint Image Corporation of Walnut, California; Nano Pacific Corporation of South San Francisco, California; IJSS Inc. (d/b/a/ TonerZone.com Inc. and Inkjet Superstore) of Los Angeles, California; Chung Pal Shin of Cerritos, California; Nectron International, Inc. of Sugarland, Texas; Quality Cartridges Inc. of Brooklyn, New York; Direct Billing International Incorporated (d/b/a/Office Supply Outfitter and d/b/a The Ribbon Connection) of Carlsbad, California; E-Toner Mart, Inc. of South El Monte, California; Alpha Image Tech of South El Monte, California; ACM Technologies, Inc. of Corona, California; Virtual Imaging Products Inc. of North York, Ontario; Acecom Inc.—San Antonia (d/b/a/Inksell.com) of San Antonia, Texas; Ink Technologies Printer Supplied, LLC (d/b/a/Ink Technologies LLC) of Dayton, Ohio; Jahwa Electronics Co., Ltd of Chungchongbuk-do, South Korea; Huizhou Jahwa Electronics Co., Ltd. of Guangdong Province, China; Copy Technologies, Inc. of Atlanta, Georgia; Laser Toner Technology, Inc. of Atlanta, Georgia; C&R Service, Incorporated of Corinth, Texas; Print-Rite Holdings Ltd., of Chai Wan, Hong Kong (''Print-Rite''); and Union Technology Int'l (M.C.O.) Co., Ltd. of Rodrigo Rodrigues, Macao. The Commission determined not to review an ID terminating the investigation as to Print-Rite based on a settlement agreement. Commission Notice (Jan. 10, 2011). The Commission determined to review and affirm several IDs (Order Nos. 15–19) finding several respondents in default under Commission Rules 210.16(a)(2) and (b)(2) based on those respondents' elections to default. Commission Notice (Mar. 3, 2011) (Order Nos. 15–16); Commission Notice (Mar. 11, 2011) (Order Nos. 17–18); Commission Notice (Mar. 11, 2011) (Order No. 19). The Commission determined not to review several other IDs (Order Nos. 23–24) finding the remaining respondents in default. Commission Notice (Mar. 23, 2011) (Order No. 23); and Commission Notice (April 6, 2011) (Order No. 24).

On April 25, 2011, Lexmark filed a motion pursuant to Commission Rule 210.18 (19 CFR 210.18) for summary determination of violation of Section 337 and requesting issuance of a general exclusion order and cease and desist orders against defaulting respondents. On May 5, 2011, the Commission investigative attorney filed a response supporting the motion, on the condition that Lexmark submit (1) A declaration from its expert, Charles Reinholtz, averring that the statements in his expert report are true and correct, and (2) a declaration from Andrew Gardner that the accused products do not have any substantial non-infringing uses. Lexmark filed the submissions per the IA's request.

On June 1, 2011, the ALJ issued the subject ID granting Lexmark's motion for summary determination of violation of Section 337. No petitions for review of the ID were filed. The ID also contained the ALJ's recommended determination of remedy and bonding. Specifically, the ALJ recommended issuance of a general exclusion order and cease and desist orders against the defaulting respondents. The ALJ further recommended that the Commission set a 100% bond during the period of Presidential review.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined not to review the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Monday, August 1, 2011. Reply submissions must be filed no later than the close of business on Monday, August 8, 2011. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12

true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–210.46 and 210.50).

By order of the Commission.

Issued: July 12, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–17821 Filed 7–14–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–735]

In the Matter of Certain Flash Memory Chips And Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Terminating The Investigation in Its Entirety on The Basis of a Settlement Agreement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 42) granting complainant's unopposed motion to terminate in its entirety Inv. No. 337–TA–735, *Certain Flash Memory Chips and Products Containing Same* on the basis of a settlement agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 13, 2010, based on a complaint filed by Spansion LLC of Sunnyvale, California (''Spansion''). 75 FR. 55604–5 (Sept 13, 2010). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash memory chips and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 7,018,922; 6,900,124 (''the '124 patent''); 6,459,625; and 6,369,416 (''the '416 patent''). The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named numerous respondents, including Samsung Electronics Co., Ltd. of Seoul, South Korea (''Samsung''); Samsung Electronics America, Inc. of Ridgefield Park, New Jersey, Samsung International, Inc. of San Diego, California, Samsung Semiconductor, Inc. of San Jose, California, and Samsung Telecommunications America, LLC of Richardson, Texas (collectively ''Samsung subsidiaries''). On April 27, 2011, the Commission determined not to review an ID terminating the investigation as to claims 6–10 of the '124 patent. On June 13, 2011, the Commission determined not to review an ID terminating the investigation as to claim 4 of the '416 patent.

On June 16, 2011, Spansion filed an unopposed motion to terminate the investigation in its entirety on the basis of a settlement agreement between Spansion and Samsung and the Samsung subsidiaries. On June 17, 2011, the Commission Investigative attorney filed a response in support of the motion.

On June 20, 2011, the ALJ issued the subject ID, granting, pursuant to Commission Rule 210.21(b) (19 CFR 210.21(b)), Spansion's motion to terminate the investigation in its entirety. No petitions for review were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: July 12, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–17825 Filed 7–14–11; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–068)]

NASA Advisory Council; Science Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–462, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Science Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Tuesday, August 2, 7:30 a.m. to 2:45 p.m., Local Time, and Wednesday, August 3, 2011, 7:30 a.m. to 11:30 a.m., Local Time.

ADDRESSES: NASA Ames Research Center, NASA Ames Conference Center, Building 3, 500 Severyns Avenue, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–1377, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This

meeting is also available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 888–324–2913, pass code Science Committee, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* meeting number on August 2 is 999 757 273, and password Science@Aug2; the meeting number on August 3 is 995 402 118, and password Science@Aug3.

The agenda for the meeting includes the following topics:

—Program and Subcommittee Updates.

—Science in NASA's New Education and Public Outreach Framework (Education and Public Outreach Committee/Science Committee Joint Meeting, August 2, 2011, 11 a.m.–12:30 p.m., Local Time. Please see signs for location.).

—Task Group on Analysis Groups Final Report (Exploration Committee/Space Operations Committee/Science Committee Joint Meeting, August 2, 2011, 7:45 a.m.–8:30 a.m., Local Time. Please see signs for location.).

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to the NASA Ames Research Center. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or resident alien card in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; home address; driver's license number and state of issue; and Social Security number to Marian Norris via e-mail at *mnorris@nasa.gov* or by fax at (202) 358–1377.

Dated: July 11, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–17914 Filed 7–14–11; 8:45 am]

BILLING CODE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–066)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC). The agenda topics for the meeting will include:

DATES: Thursday, August 4, 2011, 8 a.m.–5 p.m., and Friday, August 5, 2011, 8 a.m.–12 p.m., Local Time.

ADDRESSES: NASA Ames Conference Center (Building 3), Ballroom, 500 Severyns Avenue, NASA Research Park, NASA Ames Research Center (ARC), Moffett Field, CA 94035–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NAC Administrative Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, 202/358–1148.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include reports from the NAC Committees:

—Aeronautics.

—Audit, Finance and Analysis.

—Commercial Space.

—Education and Public Outreach.

—Exploration.

—Information Technology Infrastructure.

—Science.

—Space Operations.

—Technology and Innovation.

The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may call dial access number, 1–888–806–5185 and then enter the numeric participant passcode: 4533096 followed by the # sign. To join via WebEx the link is *https://nasa.webex.com/,* meeting number on August 4, 2011, is 998 050 366, and password nac2011! On Friday, August 5, 2011, the meeting number will be 991 219 357, and password nac2011! It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to show a valid picture identification such as driver's license to enter into the NASA Research Park, and must state they are attending the NASA Advisory Council meeting in the NASA Ames Research Center Conference Center. All non-U.S. citizens must submit their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), Permanent Resident Alien card number and expiration date (if applicable), place and date of entry into the U.S., and passport information to include country of issue, number, and expiration date to Ms. Rho Christensen, Protocol Specialist, Office of the Center Director, NASA Ames Research Center, Moffett Field, CA, by July 28, 2011. For questions, please call Ms. Rho Christensen at (650) 604–2476.

Dated: July 11, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–17921 Filed 7–14–11; 8:45 am]

BILLING CODE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–067)]

NASA Advisory Council; Education and Public Outreach Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Education and Public Outreach Committee of the NASA Advisory Council.

DATES: Tuesday, August 2, 2011, 8:30 a.m. to 2:45 p.m., Local Time.

ADDRESSES: NASA Ames Research Center, Building 3, NASA Ames Conference Center Northwing Room, 500 Severyns Road, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: This meeting will also take place telephonically and via WebEx. Any interested person should contact Ms. Erika G. Vick, Executive Secretary for the Education and Public Outreach Committee, National Aeronautics and Space Administration, Washington, DC, at *Erika.vick-1@nasa.gov,* no later than 4 p.m., local time, July 29, 2011, to get further information about participating via teleconference and/or WebEx.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

- Science in NASA's New Education and Public Outreach Framework (Education and Public Outreach Committee/Science Committee Joint Meeting from 11 a.m.–12:30 p.m., Local Time. Please see signs for location.).
- NASA Ames Education Programs.
- NASA Ames Public Outreach Programs.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to the NASA Ames Research Center. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or resident alien card in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; home address; driver's license number and state of issue; and Social Security number to Erika Vick via e-mail at *erika.vick-1@nasa.gov* or by fax at (202) 358–4332.

Dated: July 11, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–17915 Filed 7–14–11; 8:45 am]

BILLING CODE

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTPS–PAC)

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101–6, announcement is made for the following committee meeting. The meeting will be held to discuss the matters relating to the Classified National Security Information Program for State, Local, Tribal, and Private Sector Entities.

DATES: The meeting will be held on July 27, 2011, from 10 a.m. to 12 noon.

ADDRESSES: National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Jefferson Room, Washington, DC 20408.

FOR FURTHER INFORMATON CONTACT: Robert J. Skwirot, Senior Program Analyst, ISOO, National Archives Building, 700 Pennsylvania Avenue, NW., Washington, DC 20408, telephone number (202) 357–5398, or at *robert.skwirot@nara.gov.* Contact ISOO at *ISOO@nara.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than Friday, July 22, 2011. ISOO will provide additional instructions for gaining access to the location of the meeting.

Dated: July 12, 2011.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 2011–17912 Filed 7–14–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATES: The Members of the National Council on Disability (NCD) will meet for a board meeting on Friday, July 22, from 9 a.m.–4 p.m., ET. Please refer to the NCD Web site (*http://www.ncd.gov*) for any late changes to the meeting times.

PLACE: The board meeting will occur at the Access Board Conference Room, 1331 F Street, NW., Suite 800, Washington, DC.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The agenda for the board meeting includes a review of the agency's bylaws and strategic plan, as well as presentations by Karen Peltz-Strauss, Deputy Chief, Consumer & Governmental Affairs, regarding the Twenty-First Century Communications and Video Accessibility Act, and by Judy Heumann, State Department Special Advisor for International Disability Rights, regarding the United Nations Convention on the Rights of Persons with Disabilities.

A public comment session will be held from 1 until 1:30 p.m., ET. Individuals interested in making public comments may do so in-person, by phone, or by providing written comments by e-mail, fax, or mail. The toll-free call-in number is 1–888–211–4542, and the passcode/conference ID is 6478082. The conference call's leader's name is Jonathan Young, if asked for this information, and the title of the call is ''NCD meeting.'' Written comments on disability-related issues of concern or interest may be mailed to NCD's office at 1331 F Street, NW., Suite 850, Washington, DC 20004; faxed to the NCD office at (202) 272–2022; or may also be e-mailed to *ncd@ncd.gov* at any time.

CONTACT PERSON FOR MORE INFORMATION: Anne Sommers, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

ACCOMMODATIONS: Those who plan to attend and require accommodations should notify NCD as soon as possible to allow time to make arrangements.

Dated: July 12, 2011.

Aaron Bishop,

Executive Director.

[FR Doc. 2011–17941 Filed 7–13–11; 11:15 am]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of additional meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information

given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that the meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 25, 2011.

Time: 1 to 3 p.m.

Location: Room 430.

Program: This meeting, which will be by teleconference, will review applications for the NEH on the Road Cooperative Agreement, submitted to the Division of Pubic Programs at the July 6, 2011 deadline.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. 2011–17929 Filed 7–14–11; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.* This is the second notice; the first notice was published at 76 FR 24061 and no substantial comments were received. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

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

SUPPLEMENTARY INFORMATION: *Title of Collection:* Fellowship Applications and Award Forms.

OMB Approval Number: 3145–0023.

Type of Request: Intent to seek approval to extend without revision an information collection for three years.

Abstract

Section 10 of the National Science Foundation Act of 1950 (42 U.S.C. 1861 *et seq.*), as amended, states that ''The Foundation is authorized to award, within the limits of funds made available * * * scholarships and graduate fellowships for scientific study or scientific work in the mathematical, physical, biological, engineering, social, and other sciences at accredited U.S. institutions selected by the recipient of such aid, for stated periods of time.''

The Graduate Research Fellowship Program is designed to meet the following objectives:

- To select, recognize, and financially support individuals with the demonstrated potential to be high achieving scientists and engineers.
- To broaden participation in science and engineering.

The list of GRFP Fellows sponsored by the Foundation may be found via FastLane through the NSF Web site: *http://www.fastlane.nsf.gov.* The GRF Program is described in the Solicitation available at: *http://www.nsf.gov/publications/pub_summ.jsp?WT.z_pims_id=6201&ods_key=nsf10604.*

Estimate of Burden: This is an annual application program providing three years of support to individuals, usable over a five-year fellowship period. The application deadline is the third week in November. It is estimated that each submission is averaged to be 12 hours per respondent.

Respondents: Individuals.

Estimated Number of Responses: 12,000.

Estimated Total Annual Burden on Respondents: 144,000 hours.

Frequency of Responses: Annually.

Dated: July 12, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–17863 Filed 7–14–11; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–19; SEC File No. 270–148; OMB Control No. 3235–0133.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17a–19 (17 CFR 240.17a–19) and Form X–17A–19 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17a–19 requires national securities exchanges and registered national securities associations to file a Form X–17A–19 with the Commission within 5 days of the initiation, suspension or termination of a member in order to notify the Commission that a change in designated examining authority may be necessary.

It is anticipated that ten national securities exchanges and registered national securities associations collectively will make 1,200 total filings annually pursuant to Rule 17a–19 and that each filing will take approximately 15 minutes. The total burden is estimated to be approximately 300 total annual hours.

Written comments are invited on: (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 estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: July 8, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17803 Filed 7–14–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–54A; SEC File No. 270–182; OMB Control No. 3235–0237.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act''), certain investment companies can elect to be regulated as business development companies, as defined in Section 2(a)(48) of the Investment Company Act (15 U.S.C. 80a–2(a)(48)). Under Section 54(a) of the Investment Company Act (15 U.S.C. 80a–53(a)), any company defined in Section 2(a)(48)(A) and (B) may elect to be subject to the provisions of Sections 55 through 65 of the Investment Company Act (15 U.S.C. 80a–54 to 80a–64) by filing with the Commission a notification of election, if such company has: (1) A class of equity securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''); or (2) filed a registration statement pursuant to Section 12 of the Exchange Act for a class of equity securities. The Commission has adopted Form N–54A (17 CFR 274.53) as the form for notification of election to be regulated as business development companies.

The purpose of Form N–54A is to notify the Commission that the investment company making the notification elects to be subject to Sections 55 through 65 of the Investment Company Act, enabling the Commission to administer those provisions of the Investment Company Act to such companies.

The Commission estimates that on average approximately seven business development companies file these notifications each year. Each of those business development companies need only make a single filing of Form N–54A. The Commission further estimates that this information collection imposes a burden of 0.5 hours, resulting in a total annual time burden of 3.5 hours. Based on the estimated wage rate, the total cost to the business development company industry of the hour burden for complying with Form N–54A would be approximately $1,120.

The collection of information under Form N–54A is mandatory. The information provided under the form is not kept confidential. 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: July 7, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17817 Filed 7–14–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 31a–1; SEC File No. 270–173; OMB Control No. 3235–0178.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension.

Rule 31a–1 (17 CFR 270.31a–1) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a) is entitled ''Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.'' Rule 31a–1 requires registered investment companies (''funds''), and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a fund, to maintain and keep current accounts, books, and other documents which constitute the record forming the basis for financial statements required to be filed pursuant to section 31 of the Act (15 U.S.C. 80a–30) and of the auditor's certificates relating thereto. The rule lists specific

records to be maintained by funds. The rule also requires certain underwriters, brokers, dealers, depositors, and investment advisers to maintain the records that they are required to maintain under federal securities laws.

There are approximately 4218 investment companies registered with the Commission, all of which are required to comply with rule 31a–1. For purposes of determining the burden imposed by rule 31a–1, the Commission staff estimates that each fund is divided into approximately four series, on average, and that each series is required to comply with the recordkeeping requirements of rule 31a–1. Based on conversations with fund representatives, it is estimated that rule 31a–1 imposes an average burden of approximately 1750 hours annually per series for a total of 7000 annual hours per fund. The estimated total annual burden for all 4218 funds subject to the rule therefore is approximately 29,526,000 hours. Based on conversations with fund representatives, however, the Commission staff estimates that even absent the requirements of rule 31a–1, 90 percent of the records created pursuant to the rule are the type that generally would be created as a matter of normal business practice and to prepare financial statements, estimated to be approximately 26,573,400 annual hours. Thus, the Commission staff estimates that the total annual burden associated with rule 31a–1 is 2,952,600 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. 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.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden(s) of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: July 7, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17815 Filed 7–14–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29719; 812–13919]

J.P. Morgan Securities LLC, et al.; Notice of Application and Temporary Order

July 11, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against J.P. Morgan Securities LLC (''JPMS'') on July 8, 2011 by the United States District Court for the District of New Jersey (''Injunction'') until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

APPLICANTS: JPMS; Bear Stearns Asset Management Inc. (''BSAM''), Bear Stearns Health Innoventures Management, L.L.C. (''BSHIM''), BSCGP Inc. (''BSGCP''), Constellation Growth Capital LLC (''Constellation''), Constellation Ventures Management II, LLC (''Constellation II''), Highbridge Capital Management, LLC (''Highbridge''), JF International Management Inc. (''JFIMI''), JPMorgan Asset Management (UK) Limited (''JPMAMUK''), JPMorgan Distribution Services, Inc. (''JPMDS''), J.P. Morgan Institutional Investments, Inc. (''JPMII''), J.P. Morgan Investment Management Inc. (''JPMIM''), J.P. Morgan Latin America Management Company, LLC (''JPMLAM''), J.P. Morgan Partners, LLC (''JPMP''), J.P. Morgan Private Investments Inc. (''JPMPI''), OEP Co-Investors Management II, Ltd. (''OEP II''), OEP Co-Investors Management III, Ltd. (''OEP III,'' and together with OEP II, the ''OEP Entities''), Security Capital Research & Management Incorporated (''Security Capital''), Sixty Wall Street GP Corporation (''Sixty Wall GP''), Sixty Wall Street Management Company, LLC (''Sixty Wall Management'') and Technology Coinvestors Management, LLC (''TCM'') (each an ''Applicant'' and collectively, the ''Applicants'').[1]

FILING DATE: The application was filed on July 7, 2011 and amended on July 11, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 5, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: JPMS, 338 Madison Avenue, New York, NY 10179; BSAM, BSHIM, BSCGP, Constellation II, JPMII, JPMIM, JPMLAM, JPMP, JPMPI, Sixty Wall GP, Sixty Wall Management and TCM, 270 Park Avenue, New York, NY 10017; Constellation and Highbridge, 49 West 57th Street, 32nd Floor, New York, NY 10019; JFIMI, 21st Floor, Chater House, 8 Connaught Road Central, Hong Kong; JPMAMUK, 125 London Wall, London, UK, EC2Y5AJ; JPMDS, 1111 Polaris Parkway, Columbus, OH 43240; OEP Entities, 320 Park Avenue, 18th Floor, New York, NY 10022; and Security Capital, 10 South Dearborn Street, Suite 1400, Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at 202–551–6811 or Daniele Marchesani, Branch Chief, at 202–551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and summary of the application. The complete application may be obtained via the Commission's website by

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which JPMS is or may become an affiliated person within the meaning of section 2(a)(3) of the Act (together with the Applicants, the ''Covered Persons'').

searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. JPMS, a limited liability company organized under the laws of Delaware, is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (the ''Exchange Act'') and is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). JPMS does not currently serve as investment adviser, sub-adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end investment company, registered unit investment trust (''UIT'') or registered face amount certificate company, or investment adviser of any employees' securities company, as defined in section 2(a)(13) of the Act (''ESC'') (''Fund Service Activities''). ''Funds'' refers to the registered investment companies or ESCs for which a Covered Person provides Fund Service Activities. The ultimate parent of JPMS is J.P. Morgan Chase & Co. (''JPMC''). JPMC is a financial services holding company whose businesses provide a broad range of financial services to consumer and corporate customers. JPMC is also the ultimate parent of the other Applicants, who, as subsidiaries of the same ultimate parent, are under common control with JPMS.

2. BSAM is registered as an investment adviser under the Advisers Act and serves as investment adviser or sub-adviser to various Funds, including as a general partner that provides investment advisory services to various ESCs, which provide investment opportunities for highly compensated key employees, officer, directors and current consultants of JPMC and its affiliates.[2] BSHIM, BSCGP, Constellation II, the OEP Entities and TCM serve as general partners that provide investment advisory services to various ESCs. Constellation serves as a sub-adviser to various ESCs. Highbridge, JFIMI, JPMAMUK, JPMIM, JPMPI, and Security Capital are registered as investment advisers under the Advisers Act and serve as investment advisers or sub-advisers to various Funds. JPMLAM, JPMP, Sixty Wall GP, Sixty Wall Management are registered as investment advisers under the Advisers Act and serve as investment advisers or sub-advisers to ESCs. JPMDS is registered as a broker-dealer under the Exchange Act and serves as principal underwriter to various Funds. JPMII is registered as a broker-dealer under the Exchange Act and serves as placement agent to various Funds.[3]

3. On July 8, 2011, the United States District Court for the District of New Jersey entered a judgment, which included the Injunction, against JPMS (''Judgment'') in a matter brought by the Commission.[4] The Commission alleged in the complaint (''Complaint'') that prior to at least 2005, JPMS engaged in fraudulent practices and made misrepresentations and omissions in connection with bidding on municipal reinvestment instruments. The Complaint alleged that JPMS engaged in fraudulent practices, misrepresentations, and omissions that affected the prices of certain reinvestment instruments, deprived certain municipalities of a presumption that their reinvestment instruments were purchased at fair market value, and/or jeopardized the tax-exempt status of certain securities. Based on the alleged misconduct described above, the Complaint alleged that JPMS violated section 15(c)(1)(A) of the Exchange Act. Without admitting or denying any of the allegations in the Complaint (other than those relating to the jurisdiction of the District Court over it and the subject matter, solely for purposes of this action), JPMS consented to the entry of the Injunction and other relief, including disgorgement, prejudgment interest, and civil monetary penalties.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an underwriter, broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT, or registered face-amount certificate company or as investment adviser of an ESC. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include, among others, any person directly or indirectly controlling, controlled by, or under common control, with the other person. Applicants state that JPMS is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) of the Act if it is established that these provisions, as applied to the Applicants, are unduly or disproportionately severe or that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them and other Covered Persons from the disqualification provisions of section 9(a).

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants engaging in Fund Service Activities. Applicants also state to the best of their knowledge (i) none of the current directors, officers, or employees of the Applicants (other than JPMS) that are involved in providing Fund Service Activities (or any other persons in such roles during the time period covered by the Complaint) participated in the conduct alleged in the Complaint to have constituted the violations that provided a basis for the Injunction; and (ii) the personnel at JPMS who participated in the conduct alleged in the Complaint to have constituted the violations that provided a basis for the Injunction have had no, and will not have any, involvement in providing Fund Service Activities to the Funds on

[2] Every Applicant that is a general partner that provides investment advisory services to one or more ESCs believes, for purposes of the application, that it is performing a function that falls within the definition of ''investment adviser'' in section 2(a)(20) of the Act.

[3] JPMII serves as placement agent to JPMorgan Institutional Trust (''Trust'') with respect to three of its series. The Trust is an open-end investment company registered under the Act, but its shares are not registered under the Securities Act of 1933, as amended. JPMII believes, for purposes of the application, that it is performing a function that falls within the definition of principal underwriter in section 2(a)(29) of the Act.

[4] *U.S. Securities and Exchange Commission* v. *J.P. Morgan Securities LLC,* Case No. 2:11–cv–03877–WJM (D.N.J. July 8, 2011).

behalf of the Applicants or other Covered Persons.

5. Applicants state that the inability of the Applicants to engage in Fund Service Activities would result in potentially severe financial hardships for the Funds they serve and the Funds' shareholders or unitholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors of the Funds (excluding for this purpose the ESCs) (the ''Boards''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of such Funds, and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, if any, describing the circumstances that led to the Injunction, any impact on the Funds, and the application. Applicants state that they will provide the Boards with the information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they were barred from providing Fund Service Activities to registered investment companies and ESCs, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in providing Fund Service Activities. Applicants further state that prohibiting them from providing Fund Service Activities would not only adversely affect their businesses, but would also adversely affect approximately 940 employees that are involved in those activities. Applicants also state that disqualifying certain Applicants from continuing to provide investment advisory services to ESCs is not in the public interest or in furtherance of the protection of investors. Because the ESCs have been formed for the benefit of key employees, officers, directors and current consultants of JPMC and its affiliates, it would not be consistent with the purposes of the ESC provisions of the Act to require another entity not affiliated with JPMC to manage the ESCs. In addition, participating employees of JPMC and its affiliates likely subscribed for interests in the ESCs with the expectation that the ESCs would be managed by an affiliate of JPMC.

7. Applicants state that Applicants and certain other affiliated persons of the Applicants have previously received orders under section 9(c) of the Act, as the result of conduct that triggered section 9(a), as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption. Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from July 8, 2011, until the Commission takes final action on their application for a permanent order.

By the Commission.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17816 Filed 7–14–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29720; File No. 812–13741]

FQF Trust, et al.; Notice of Application

July 11, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) Series of certain open-end management investment companies whose portfolios will consist of the component securities of a securities index to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

APPLICANTS: FQF Trust (the ''Trust''), FFCM, LLC (''FFCM,'' and together with any entity controlling, controlled by or under common control with FFCM, ''Adviser'') and Foreside Fund Services, LLC (the ''Distributor'').

DATES: *Filing Dates:* The application was filed on December 31, 2009 and amended on January 28, 2010, March 9, 2010, March 29, 2011, June 22, 2011, and July 11, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 5, 2011 and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 250 Congress Street, 5th Floor, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel at (202) 551–6813, or Dalia Osman Blass, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the

application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered as an open-end management investment company and is organized as a Delaware statutory trust that will offer an unlimited number of series. The Trust initially will offer seven series (''Initial Funds'') whose performance will correspond to the price and yield performance, before fees and expenses, of a specified securities index (''Underlying Index'').[1]

2. Applicants request that the order apply to the Initial Funds and any additional series of the Trust and any other existing or future open-end management investment companies or series thereof that track a specified Underlying Index (''Future Funds,'' and together with the Initial Funds, the ''Funds'').[2] Any Future Fund will be (a) Advised by the Adviser, and (b) seek investment returns that correspond to the price and yield performance, before fees and expenses, of a specified securities index. Funds may be based on Underlying Indexes comprised of domestic equity securities (''Domestic Funds''), foreign equity securities (''Foreign Funds''), fixed income securities (''Fixed Income Funds''), or some combination thereof. Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.'' Funds based on Long/Short Indexes are ''Long/Short Funds.'' Underlying Indexes that use a 130/30 investment strategy are referred to as ''130/30 Indexes.'' Funds based on 130/30 Indexes are ''130/30 Funds.'' Underlying Indexes composed of fixed income securities are referred to as ''Fixed Income Indexes.'' The Initial Funds are Domestic Funds that are Long/Short Funds.

3. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''), and will serve as investment adviser to the Funds. The Adviser may enter into sub-advisory agreements with one or more investment advisers each of which will serve as a sub-adviser to a Fund (each, a ''Subadviser''). Each Subadviser will be registered under the Advisers Act. The Distributor is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as the principal underwriter and distributor for the Shares.[3]

4. Each Fund will consist of a portfolio of securities (''Portfolio Securities'') and other instruments selected to correspond to the performance of a specified Underlying Index.[4] No entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, a Fund, the Adviser, any Subadviser, or promoter of a Fund, or of the Distributor.

5. The value of each Underlying Index, other than a Fixed Income Index, will be updated intra-day on a real time basis as its individual Component Securities change in price. These intra-day values of each Underlying Index will be disseminated every 15 seconds throughout the trading day by the national securities exchange, as defined in section 2(a)(26) of the Act (''Exchange''), on which the Shares are primarily listed (''Primary Listing Exchange'') or a third party organization authorized by the relevant Index Provider. The value of the Fixed Income Indexes will be calculated and published once each ''Business Day,'' which is defined as any day that a Fund is required to be open under section 22(e) of the Act. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index. A Fund using a representative sampling strategy will attempt to match the risk and return characteristics of a Fund's portfolio to the risk and return characteristics of its Underlying Index. Applicants state that use of the representative sampling strategy may prevent a Fund from tracking the performance of its Underlying Index with the same degree of accuracy as would a Fund that invests in every Component Security of the Underlying Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of less than 5 percent.

6. Each Fund will issue, on a continuous basis, Creation Units, which will typically consist of 25,000 to 100,000 Shares and have an initial price of at least $1,000,000. Shares of the Fund generally will be sold in Creation Units in exchange for an in-kind deposit by the purchaser of specified securities designated by the Adviser or Subadviser (the ''Deposit Securities''), together with the deposit of a specified cash payment (''Balancing Amount,'' and collectively with the Deposit Securities, ''Deposit Basket''). The Balancing Amount is an amount equal to the difference between (a) The net asset value (''NAV'') (per Creation Unit) of a Fund and (b) the total aggregate market value (per Creation Unit) of the Deposit Securities or Redemption Securities (as defined below).[5] Authorized Participants purchasing Creation Units must either: (1) Initiate instructions pertaining to Deposit Baskets through the CNS System as such processes have been enhanced to effect purchases and redemptions of Creation Units (such process referred to as the ''Shares Clearing Process'') or (2) deliver Deposit Baskets to the Trust outside the Shares

[1] CME Group Index Services LLC (d/b/a Dow Jones Indexes) will serve as the Index Providers for the Initial Funds. The Underlying Indexes for the Initial Funds are the U.S. Market Neutral Momentum Index, U.S. Market Neutral Value Index, U.S. Market Neutral Beta Index, U.S. Market Neutral Size Index, U.S. Market Neutral Quality Index, U.S. Market Neutral Anti-Momentum Index, and U.S. Market Neutral Anti-Beta Index.

[2] All entities that currently intend to rely on the order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application. An Acquiring Fund (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[3] Applicants request that the order also apply to future distributors that comply with the terms and conditions of the application.

[4] Applicants represent that each Fund will invest at least 80% of its total assets in the component securities that comprise its Underlying Index (''Component Securities'') or, as applicable, depositary receipts or TBA Transactions (as defined below) representing Component Securities. In the case of the Long/Short Funds, cash proceeds received from short sales are not included in total assets for purposes of this calculation. Each Fund also may invest up to 20% of its total assets (the ''Asset Basket'') in (1) Securities other than Component Securities, (2) financial instruments (including (i) futures contracts, (ii) options on securities, indexes and futures contracts, (iii) equity caps, collars and floors, (iv) swap agreements, and (v) forward contracts), and (3) money market instruments. Funds may hold in their Asset Basket the instruments described in (1) through (3) to the extent that the Adviser believes such investments should help the Fund's overall portfolio track the Underlying Index.

A TBA Transaction is a method of trading mortgage-backed securities. In a TBA transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[5] Each Fund will sell and redeem Creation Units only on a Business Day. Each Business Day, prior to the opening of trading on the NYSE, the Custodian, transfer agent or index receipt agent, as applicable, will make available through the NSCC the list of securities and the required number of shares of each Deposit Security to be included in the Deposit Basket and the Balancing Amount for each Fund.

Clearing Process, through the facilities of DTC (''DTC Process''). Each Fund reserves the right to permit the substitution of a cash-in-lieu amount to be added to the Balancing Amount, if any, to replace any Deposit Security that (1) May be unavailable or not available in sufficient quantity for delivery to the applicable Fund upon the purchase of Creation Units, (2) may not be eligible for transfer through the Shares Clearing Process or DTC Process, or (3) may not be eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting. In addition, applicants expect that a cash-in-lieu amount would replace any TBA Transaction that is listed as a Deposit Security or Redemption Security.

7. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will be responsible for transmitting the orders to the Funds. The Distributor also will be responsible for delivering the Fund's prospectus to those persons acquiring Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.[6] In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares. An Authorized Participant must be either (1) A ''Participating Party,'' (*i.e.,* a broker-dealer or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing house registered with the Commission, or (2) a participant in the Depository Trust Company (''DTC'', and such participant, ''DTC Participant''), which, in either case, has signed a ''Participant Agreement'' with the Distributor.

8. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a specialist or market maker and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/ask market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

9. Applicants expect that purchasers of Creation Units will include institutional investors, arbitrageurs, traders and other market participants. Exchange specialists or market makers also may purchase Creation Units for use in market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[7] Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

10. Shares will not be individually redeemable. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit will receive (a) A basket of Portfolio Securities designated by the Adviser or Subadviser to be delivered for redemptions (''Redemption Securities'') and (b) a Balancing Amount on the date that the request for redemption is submitted. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, as described above with respect to Deposit Securities.

11. An investor acquiring or redeeming a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or redemption of Creation Units.[8] In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

12. Because they cannot be transferred in kind, short positions and financial instruments will not be included in the Deposit Securities and Redemption Securities for a Fund. For the Long/Short Funds and 130/30 Funds, the Adviser will provide full portfolio holdings disclosure on a daily basis on the Funds' publicly available Web site (the ''Website'') and has developed an ''IIV File,'' which it will use to disclose the Funds' full portfolio holdings, including financial instruments and short positions. Before the opening of business on each Business Day, the Trust, Adviser or index receipt agent, will make the IIV File available by e-mail to Authorized Participants upon request. Applicants state that given either the IIV File or the Web site disclosure,[9] anyone will be able to know in real time the intraday value of the Long/Short Funds and 130/30 Funds.[10] With respect to the Long/Short Funds and 130/30 Funds, the investment characteristics of any financial instruments and short positions used to achieve short and long exposures will be described in sufficient detail for market participants to understand the principal investment strategies of the Funds and to permit informed trading of their Shares.

13. With respect to Funds that contain only long positions, Deposit Securities and Redemption Securities either (a) Will correspond pro rata to the Portfolio Securities of a Fund, or (b) will not correspond pro rata to the Portfolio Securities, provided that the Deposit Securities and Redemption Securities (1) Consist of the same representative sample of Portfolio Securities designed to generate performance that is highly correlated to the performance of the Portfolio Securities, (2) consist only of securities that are already included among the existing Portfolio Securities, and (3) are the same for all Authorized Participants on a given Business Day. In either case, a basket of Deposit Securities or Redemption Securities and a true pro rata slice of the Portfolio Securities may differ solely to the extent necessary (a) Because it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement, (b) because, in the case of equity securities, rounding is necessary

[6] Applicants state that in accepting Deposit Securities and satisfying redemptions with Redemption Securities, the relevant Funds will comply with the federal securities laws, including that the Deposit Securities and Redemption Securities are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Securities and satisfying redemptions with Redemption Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the relevant Funds will comply with the conditions of rule 144A.

[7] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

[8] Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities.

[9] The information on the Web site will be the same as that disclosed to Authorized Participants in the IIV File, except that (1) The information provided on the Web site will be formatted to be reader-friendly and (2) the portfolio holdings data on the Web site will be calculated and displayed on a per Fund basis, while the information in the IIV File will be calculated and displayed on a per Creation Unit basis.

[10] The Primary Listing Exchange or another independent third party will disseminate, every 15 seconds during its regular trading hours, through the facilities of the Consolidated Tape Association, the Indicative Intra-Day Value (''IIV'') for each Fund, on a per Share basis.

to eliminate fractional shares or lots that are not tradable round lots, or (c) for temporary periods, to effect changes in the Portfolio Securities as a result of the rebalancing of an Underlying Index. A tradable round lot for an equity security will be the standard unit of trading in that particular type of security in its primary market.

14. With respect to the Long/Short Funds and 130/30 Funds, Deposit Securities and Redemption Securities that represent Component Securities from the long portion of the relevant Underlying Index either (a) Will correspond pro rata to the long Portfolio Securities of the relevant Long/Short Fund or 130/30 Fund, or (b) will not correspond pro rata to the long Portfolio Securities, provided that the Deposit Securities and Redemption Securities (1) Consist of the same representative sample of the long Portfolio Securities designed to generate performance that is highly correlated to the performance of the long Portfolio Securities, (2) consist only of securities that are already included among the existing long Portfolio Securities, and (3) are the same for all Authorized Participants on a given Business Day. In either case, a basket of Deposit Securities or Redemption Securities and a true pro rata slice of the long Portfolio Securities may differ solely to the extent necessary (a) Because it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement, (b) because, in the case of equity securities, rounding is necessary to eliminate fractional shares or lots that are not tradable round lots, or (c) for temporary periods, to effect changes in the long Portfolio Securities as a result of the rebalancing of an Underlying Index. A tradable round lot for an equity security will be the standard unit of trading in that particular type of security in its primary market.

15. Neither the Trust nor any Fund will be advertised, marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an ''ETF,'' an ''investment company,'' a ''fund,'' or a ''trust.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units or refer to redeemability, will prominently disclose that (1) Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Units only, and (2) the purchase and sale price of individual Shares trading on an Exchange may be below, at, or above the most recently calculated NAV for such Shares. The same approach will be followed in the shareholder reports and other investor educational materials issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

16. The Web site will include the prospectus, statement of additional information (''SAI''), and quantitative information for all Funds, updated on a daily basis, including the market closing price or mid-point of the bid/ask spread at the time of calculation of the relevant Fund's NAV (the ''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to buy and sell Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) Prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing

shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) Secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions of Creation Units of the Foreign Funds is contingent not only on the settlement cycle of the U.S. securities markets, but also on the delivery cycles present in local markets for the underlying foreign securities held by the Foreign Funds. Applicants believe that under certain circumstances, the delivery cycles for transferring Portfolio Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide for payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Securities of each Foreign Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit.[11] With respect to Future Funds that are Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application.

8. Applicants submit that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Foreign Fund to be made within 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days, up to 14 calendar days, needed to deliver the proceeds for each affected Foreign Fund. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

9. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request an exemption to permit management investment companies (''Acquiring Management Companies'') and unit investment trusts (''Acquiring Trusts'') registered under the Act that are not sponsored or advised by the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (collectively, ''Acquiring Funds'') to acquire Shares beyond the limits of section 12(d)(1)(A). In addition, applicants seek relief to permit the Funds, the Distributor, and any broker-dealer that is registered under the Exchange Act to sell Shares to Acquiring Funds in excess of the limits of section 12(d)(1)(B).

11. Each Acquiring Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Acquiring Fund Adviser'') and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Acquiring Fund SubAdviser''). Any Acquiring Fund Adviser or Acquiring Fund SubAdviser will be registered under the Advisers Act. Each Acquiring Trust will be sponsored by a sponsor (''Sponsor'').

12. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

13. Applicants believe that neither the Acquiring Funds nor any Acquiring Fund Affiliate would be able to exert undue influence over the Funds or any Fund Affiliates.[12] To limit the control that an Acquiring Fund may have over a Fund, applicants propose a condition prohibiting an Acquiring Fund Adviser or a Sponsor, any person controlling, controlled by, or under common control with the Acquiring Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Acquiring Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Acquiring Fund Adviser or Sponsor (''Acquiring Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Acquiring Fund SubAdviser, any person controlling, controlled by or under common control with the Acquiring Fund SubAdviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion

[11] Applicants acknowledge that relief obtained from the requirements of section 22(e) will not affect any obligations applicants may have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

[12] An ''Acquiring Fund Affiliate'' is the Acquiring Fund Adviser, Acquiring Fund SubAdviser, any Sponsor, promoter, or principal underwriter of an Acquiring Fund, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is the investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of those entities.

of such investment company or issuer) advised or sponsored by the Acquiring Fund SubAdviser or any person controlling, controlled by or under common control with the Acquiring Fund SubAdviser (''Sub-adviser Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund SubAdviser, Sponsor, or employee of the Acquiring Fund, or a person of which any such officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund SubAdviser, Sponsor, or employee is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants assert that the proposed conditions address any concerns regarding excessive layering of fees. The board of directors or trustees of any Acquiring Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged to the Acquiring Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Acquiring Management Company may invest. In addition, except as provided in condition 9, an Acquiring Fund Adviser or a trustee or Sponsor of an Acquiring Trust will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received by the Acquiring Fund Adviser, trustee or Sponsor or an affiliated person of the Acquiring Fund Adviser, trustee or Sponsor, from the Fund in connection with the investment by the Acquiring Fund in the Fund. Applicants state that any sales loads or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[13]

15. Applicants submit condition 16 addresses concerns over meaninglessly complex arrangements. Under condition 16, no Fund may acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure that Acquiring Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Acquiring Fund that intends to invest in a Fund in reliance on the requested order will be required to enter into an agreement (''Participation Agreement'') between the Fund and the Acquiring Fund. The Participation Agreement will require the Acquiring Fund to adhere to the terms and conditions of the requested order and participate in the proposed transactions in a manner that addresses concerns regarding the requested relief from section 12(d)(1). The Participation Agreement also will include an acknowledgement from the Acquiring Fund that it may rely on the requested order only to invest in Funds and not in any other investment company.

16. Applicants also note that a Fund may choose to reject a direct purchase of Shares by an Acquiring Fund. To the extent that an Acquiring Fund purchases Shares in the secondary market, a Fund would still retain its ability to reject initial purchases of Shares made in reliance on the requested order by declining to enter into the Participation Agreement prior to any investment by an Acquiring Fund in excess of the limits of section 12(d)(1)(A).

Sections 17(a)(1) and (2) of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second-tier affiliate''), from selling any security or other property to or acquiring any security or other property from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include (a) Any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities.

18. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons or second-tier affiliates of the Fund solely by virtue of one or more of the following: (1) Holding 5% or more, or more than 25%, of the outstanding Shares of one or more Funds; (2) having an affiliation with a person with an ownership interest described in (1); or (3) holding 5% or more, or more than 25%, of the shares of one or more other registered investment companies (or series thereof) advised by the Adviser.

19. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from acquiring or redeeming Creation Units through in-kind transactions. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Units will be the same for all purchases and redemptions, regardless of size or number. Deposit Securities and Redemption Securities will be valued in the same manner as Portfolio Securities are valued for purposes of calculating NAV. Applicants submit that, by using the same standards for valuing Portfolio Securities as are used for calculating the value of Deposit Securities and Redemption Securities, the Fund will ensure that its NAV will not be adversely affected by such transactions. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

20. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person or second-tier affiliate of an Acquiring Fund to sell its Shares to and redeem its Shares from an Acquiring Fund, and to engage in the accompanying in-kind transactions with the Acquiring Fund.[14] Applicants state

[13] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by FINRA.

[14] To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Acquiring Fund and a Fund, relief from section 17(a) would not be necessary. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person or second-tier affiliate of an Acquiring Fund

that the terms of the proposed transactions will be fair and reasonable and will not involve overreaching. Applicants note that any consideration paid by an Acquiring Fund for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[15] Applicants believe that any proposed transactions directly between the Funds and Acquiring Funds will be consistent with the policies of each Acquiring Fund. The purchase of Creation Units by an Acquiring Fund directly from a Fund will be accomplished in accordance with the investment restrictions of the Acquiring Fund and will be consistent with the investment policies set forth in the Acquiring Fund's registration statement. The Participation Agreement will require any Acquiring Fund that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by an Acquiring Fund will be accomplished in compliance with the investment restrictions of the Acquiring Fund and will be consistent with the investment policies set forth in the Acquiring Fund's registration statement.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

ETF Relief

1. As long as the Funds operate in reliance on the requested order, the Shares will be listed on an Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end fund or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

3. The Web site, which will be publicly accessible at no charge, will contain on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based exchange-traded funds.

Section 12(d)(1) Relief

5. The members of an Acquiring Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Sub-adviser Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, an Acquiring Fund's Advisory Group or Sub-adviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of a Fund, it will vote its shares of the Fund in the same proportion as the vote of all other holders of the Fund's shares. This condition does not apply to the Sub-adviser Group with respect to a Fund for which the Acquiring Fund Sub-adviser or a person controlling, controlled by, or under common control with the Acquiring Fund Sub-adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

6. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring Fund in a Fund to influence the terms of any services or transactions between the Acquiring Fund or Acquiring Fund Affiliate and the Fund or a Fund Affiliate.

7. The board of directors or trustees of an Acquiring Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Acquiring Fund Adviser and any Acquiring Fund Sub-adviser are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

8. Once an investment by an Acquiring Fund in the Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board, including a majority of the disinterested Board members, will determine that any consideration paid by a Fund to the Acquiring Fund or an Acquiring Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

9. An Acquiring Fund Adviser or a trustee or Sponsor of an Acquiring Trust will waive fees otherwise payable to it by the Acquiring Management Company or Acquiring Trust in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–l under the Act) received from a Fund by the Acquiring Fund Adviser or trustee or Sponsor to the Acquiring Trust or an affiliated person of the Acquiring Fund Adviser, trustee or Sponsor, other than any advisory fees paid to the Acquiring Fund Adviser or trustee or Sponsor, or an affiliated person of the Acquiring Fund Adviser, trustee or Sponsor by the Fund, in connection with the investment by the Acquiring Management Company or Acquiring Trust in the Fund. Any Acquiring Fund Sub-adviser will waive fees otherwise payable to the Acquiring Fund Sub-adviser, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from a Fund by the Acquiring Fund Sub-adviser, or an affiliated person of the Acquiring Fund Sub-adviser, other than any advisory fees paid to the Acquiring Fund Sub-adviser or its affiliated person by the Fund, in connection with the investment by the Acquiring Management Company in the Fund made at the direction of the Acquiring Fund Sub-Adviser. In the event that the Acquiring Fund Sub-adviser waives fees, the benefit of the waiver will be passed through to the Acquiring Management Company.

10. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

11. The Board, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund in an Affiliated Underwriting once an investment by the Acquiring Fund in the Shares of the Fund exceeds

because the Adviser provides investment advisory services to the Acquiring Fund.

[15] Applicants acknowledge that receipt of compensation by (a) An affiliated person of an Acquiring Fund, or an affiliated person of such person, for the purchase by the Acquiring Fund of Shares or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Acquiring Fund may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgment.

the limit of section 12(d)(l)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

12. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Acquiring Fund in the Shares of the Fund exceeds the limits of section 12(d)(l)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

13. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), the Acquiring Fund and the Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers, or the trustee and Sponsor of an Acquiring Trust, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(l)(A)(i), an Acquiring Fund will notify the Fund of the investment. At such time, the Acquiring Fund will also transmit to the Fund a list of names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Fund and the Acquiring Fund will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

14. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

15. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

16. No Fund will acquire securities of any investment company or company relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission that allows the Fund to purchase shares of a money market fund for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17877 Filed 7–14–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 3236/July 12, 2011]

Order Approving Adjustment for Inflation of the Dollar Amount Tests in Rule 205–3 Under the Investment Advisers Act of 1940

I. Background

Section 205(a)(1) of the Investment Advisers Act of 1940 (''Advisers Act'') generally prohibits an investment adviser from entering into, extending, renewing, or performing any investment advisory contract that provides for compensation to the adviser based on a share of capital gains on, or capital appreciation of, the funds of a client (also known as ''performance compensation'' or ''performance fees'').[1] Section 205(e) authorizes the Securities and Exchange Commission (''Commission'') to exempt any advisory contract from the performance fee prohibition if the contract is with persons that the Commission determines do not need the protections of the prohibition, on the basis of certain factors described in that section.[2]

Rule 205–3 under the Advisers Act exempts an investment adviser from the prohibition against charging a client performance fees in certain circumstances, including when the client is a ''qualified client.'' The rule allows an adviser to charge performance fees if the client has at least $750,000 under the management of an investment adviser immediately after entering into the advisory contract (''assets-under-management test'') or if the adviser reasonably believes the client has a net worth of more than $1,500,000 at the time the contract is entered into (''net worth test''). The Commission last revised the level of these dollar amount thresholds to account for the effects of inflation in 1998.[3]

[1] 15 U.S.C. 80b–5(a)(1).

[2] Under section 205(e), the Commission may determine that persons do not need the protections of section 205(a)(1) on the basis of such factors as ''financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with [section 205].'' 15 U.S.C. 80b–5(e).

[3] *See* Exemption To Allow Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 1731 (July 15, 1998) [63 FR 39022 (July 21, 1998)].

II. Adjustment of Dollar Amount Thresholds Under the Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act[4] (''Dodd-Frank Act'') amended section 205(e) of the Advisers Act to provide that, by July 21, 2011 and every five years thereafter, the Commission shall adjust for inflation the dollar amount thresholds included in rules issued under section 205(e), rounded to the nearest $100,000.[5] As discussed above, there are two dollar amount thresholds in rules issued under section 205(e), and they are in the assets-under-management and net worth tests in rule 205–3's definition of ''qualified client.''

On May 10, 2011, the Commission published a notice of intent to issue an order revising the dollar amount thresholds of the assets-under-management test and the net worth test.[6] We stated that, based on calculations of inflation since 1998 when the dollar amount thresholds were last revised, we intended to revise the threshold in the assets-under-management test from $750,000 to $1 million, and in the net worth test from $1.5 million to $2 million.[7] We also stated that these revised dollar amounts would take into account the effects of inflation by reference to the historic and current levels of the Personal Consumption Expenditures Chain-Type Price Index, which is published by the Department of Commerce and often used as an indicator of inflation in the personal sector of the U.S. economy.[8] The revised dollar amounts would reflect inflation from 1998 to the end of 2010, and are rounded to the nearest $100,000 as required by section 205(e) of the Advisers Act, as amended by section 418 of the Dodd-Frank Act.

The Commission's notice established a deadline of June 20, 2011 for submission of requests for a hearing. No requests for a hearing have been received by the Commission.[9]

III. Effective Date of the Order

This Order is effective as of September 19, 2011.

IV. Conclusion

Accordingly, pursuant to section 205(e) of the Investment Advisers Act of 1940 and section 418 of the Dodd-Frank Act,

It is hereby ordered that, for purposes of rule 205–3(d)(1)(i) under the Investment Advisers Act of 1940 [17 CFR 275.205–3(d)(1)(i)], a qualified client means a natural person who or a company that immediately after entering into the contract has at least $1,000,000 under the management of the investment adviser; and

It is further ordered that, for purposes of rule 205–3(d)(1)(ii)(A) under the Investment Advisers Act of 1940 [17 CFR 275.205–3(d)(1)(ii)(A)], a qualified client means a natural person who or a company that the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than $2,000,000 at the time the contract is entered into.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–17854 Filed 7–14–11; 8:45 am]

BILLING CODE 8011–01–P

[4] Pub. L. 111–203, 124 Stat. 1376 (2010).

[5] *See* section 418 of the Dodd-Frank Act.

[6] *See* Investment Adviser Performance Compensation, Investment Advisers Act Release No. 3198 (May 10, 2011) [76 FR 27959 (May 13, 2011)] (''Proposing Release''). The Commission also proposed for public comment certain amendments to rule 205–3 that would reflect any inflation adjustments to the rule that we issue by order, as well as other rule amendments that would (i) provide that the Commission will issue an order every five years adjusting for inflation the dollar amount tests, (ii) exclude the value of a person's primary residence from the test of whether a person has sufficient net worth to be considered a ''qualified client,'' and (iii) add certain transition provisions to the rule. The deadline for comments on the proposed rule amendments was July 11, 2011. *Id.*

[7] *See id.* at nn.17–18 and accompanying text.

[8] *See id.* at nn.19–21 and accompanying text.

[9] The Commission has received comments on the rule amendments that it proposed in May 2011, and those comments are available in the public rulemaking file S7–17–11 (available on the Commission's Web site at *http://www.sec.gov/comments/s7-17-11/s71711.shtml*). Several commenters expressed concern about the Commission's expressed intent to raise the dollar amount thresholds of rule 205–3. The Dodd-Frank Act clearly mandates that the Commission adjust the dollar amount thresholds that are the subject of this Order. The Commission intends to evaluate the comments it receives on the rulemaking proposal in its consideration of any adoption of the proposed amendments. *See* Proposing Release, *supra* note 6.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64834; File No. SR–CBOE–2011–057]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PAR Official Fees in Volatility Index Options

July 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 29, 2011, Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. 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

Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to amend its Fees Schedule effective July 1, 2011 to establish volume threshold tiers for the assessment of PAR Official Fees in Volatility Index Options classes based on the percentage of volume that is effected by a PAR Official on behalf of an order originating firm or, as applicable, an executing firm. The text of the proposed rule change is availableon the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE is proposing to amend its Fees Schedule effective July 1, 2011 to establish volume threshold tiers for the assessment of PAR Official Fees in Volatility Index Options. CBOE amended its Fees Schedule to establish distinct PAR Official Fees in Volatility Index Options in March 2011.[3] PAR Official Fees apply to all orders executed by a PAR Official, except for customer orders (''C'' origin code) that are not directly routed to the trading floor (an order that is directly routed to the trading floor is directed to a PAR Official for manual handling by use of a field on the order ticket). Currently, CBOE assesses PAR Official Fees in Volatility Index Options in the amount of $.03 per contract and, like Floor Brokerage Fees, a discounted rate of $.015 per contract applies for crossed orders.[4] These fees help to offset the Exchange's costs of providing PAR Official services (*e.g.,* salaries, etc).

PAR Official Fees compensate CBOE for providing overflow services to order originating firms or, as applicable, executing firms, particularly Floor Brokers,[5] when they do not have personnel available to act as agent. CBOE is proposing to establish volume threshold tiers in Volatility Index Options for the assessment of PAR Official Fees. Those order originating firms or executing firms that maintain sufficient staff to manage their floor brokerage operations and thus, do not rely heavily on CBOE personnel to execute their orders will be subject to lower PAR Official Fees than those order originating firms, or as applicable, executing firms that route a significant portion of their orders to PAR Officials for execution. CBOE believes that those firms that rely heavily on PAR Officials to conduct their floor brokerage business, such that PAR Officials execute more than an incidental number of orders on their behalf, may obtain a minimum number of Trading Permits to access the floor. Thus, these firms subsidize their floor brokerage operations at CBOE's expense in that PAR Officials are either contractors paid by CBOE or CBOE employees. Under the current proposal, Trading Permit Holders that routinely rely on PAR Officials to execute their orders in Volatility Index Options will be subject to higher PAR Official Fees as CBOE is, in effect, subsidizing their floor brokerage operations and going beyond the Exchange's intent to provide PAR Official services as a supplementary means of execution for overflow orders.

CBOE currently assesses the same amount for PAR Official Fees and Floor Brokerage Fees in Volatility Index Options.[6] In establishing the same fee amounts for Floor Brokerage Fees and PAR Official Fees, CBOE eliminated the disparity that existed between the amounts assessed for Floor Brokerage Fees and PAR Official Fees in Volatility Index Options. However, CBOE did not take into consideration the pricing advantage gained by those firms that continue to execute a significant number of orders through a PAR Official rather than obtain an appropriate amount of Trading Permits to staff their floor brokerage operations.

CBOE is proposing to amend the Fees Schedule to establish volume threshold tiers for the assessment of the PAR Official Fees in Volatility Index Options. Specifically, CBOE is proposing to assess PAR Official Fees based on the percentage of an order originating firm's or, as applicable, an executing firm's total monthly volume in Volatility Index Options that is effected by a PAR Official during a calendar month. The percentage will be calculated on a monthly basis by dividing the number of contracts executed by PAR Officials on behalf of an order originating firm or executing firm (as applicable) in Volatility Index Options by the total number of contracts executed in open outcry (by or on behalf of an order originating firm or, as applicable, an executing firm) in Volatility Index Options. The following sets forth the tier levels and specific fees that would be assessed to orders that are subject to PAR Official Fees in Volatility Index Options classes:

Tier level	% monthly volume executed through PAR official	Standard orders	Crossed orders (per side)
1	0–24.99	$.03	$.015
2	25–49.99	.06	.03
3	50–74.99	.09	.045
4	75–100	.12	.06

For example, a Floor Broker Trading Permit Holder would be assessed $.06 for all standard (non-cross) orders and $.03 for all crossed orders executed by a PAR Official on behalf of the Floor Broker during a calendar month if 25.5% of the Floor Broker Trading Permit Holder's total monthly (open outcry) volume in Volatility Index Options is executed by a PAR Official (Tier 2).

Reliance on PAR Officials as the primary means of execution is inconsistent with the Exchange's intent to provide PAR Official services as a supplementary means of execution for incidental orders. CBOE recently addressed similar concerns with the PAR Official Fees that are assessed in classes other than Volatility Index Options by establishing a threshold tier that assesses PAR Official Fees based on the percentage of an order originating firm's or, as applicable, an executing firm's total monthly volume that is effected by a PAR Official during a

[3] *See* Securities Exchange Act Release No. 64070 (March 11, 2011), 76 FR 15025 (March 18, 2011) (SR–CBOE–2011–022).

[4] PAR Official Fees and Floor Brokerage Fees for cross orders are assessed at a discounted rate because these Fees are assessed ''per side'' and thus, these fees are equal to the amount assessed for one standard (non-cross) order.

[5] CBOE Rule 6.70 provides: ''A Floor Broker is an individual (either a Trading Permit Holder or a nominee of a TPH organization) who is registered with the Exchange for the purpose, while on the Exchange floor, of accepting and executing orders received from Trading Permit Holders or from registered broker-dealers. A Floor Broker shall not accept an order from any other source unless he is the nominee of a TPH organization approved to transact business with the public in accordance with Rule 9.1. In the event the organization is approved pursuant to Rule 9.1, a Floor Broker who is the nominee of such organization may then accept orders directly from public customers where (i) The organization clears and carries the customer account or (ii) the organization has entered into an agreement with the public customer to execute orders on its behalf. Among the requirements a Floor Broker must meet in order to register pursuant to Rule 9.1 is the successful completion of an examination for the purpose of demonstrating an adequate knowledge of the securities business.''

[6] Floor Brokerage Fees are also assessed in OEX and SPX trading crowds but there are currently no PAR Officials in OEX or SPX trading crowds.

calendar month.[7] CBOE elected to exclude Volatility Index Options classes from the tier structure at that time because Volatility Index Options classes are the only classes at CBOE where Floor Brokerage Fees are also assessed. Specifically, CBOE assesses Floor Brokerage Fees in its proprietary options products. However, Volatility Index Options classes are the only proprietary classes where there is also a PAR Official available to execute orders in the trading crowd. Thus, CBOE maintained set PAR Official Fees in Volatility Index Options so that the PAR Official Fees and Floor Brokerage Fees were consistent in these classes.

After further evaluation, CBOE has determined that Trading Permit Holders continue to rely on PAR Officials for execution of orders as they are able to avoid the cost to obtain additional Trading Permits to adequately staff their business. Therefore, CBOE is proposing to establish a similar tier structure setting forth the PAR Official Fees in Volatility Index Options. CBOE is proposing to assess higher PAR Official Fees at each tier level in Volatility Index Options than the amounts assessed in other classes to account for the amount assessed for Floor Brokerage Fees in Volatility Index Option classes. As CBOE currently assesses flat Floor Brokerage Fees of $.03 per contract for standard orders and $.015 per contract for crossed orders, CBOE is proposing to establish a tier structure where the lowest tier amount is equivalent to the Floor Brokerage Fees assessed in Volatility Index Options. Thus, CBOE will not implement a fee structure that would provide an incentive for Floor Brokers to route a certain percentage of their orders to a PAR Official to avoid the Floor Brokerage Fees. CBOE believes that the proposed tier levels are reasonable and equitable in that, as provided above, PAR Officials are intended to provide overflow services to Trading Permit Holders. Further, each order originating firm or executing firm (as applicable) has the ability to control the number of orders that are routed to a PAR Official and thus, the amount of PAR Official Fees that will be assessed on a monthly basis.

An additional consideration when evaluating the equitability of the proposed tier structure is the cost of each Trading Permit. For example, Floor Broker Trading Permit Holders are subject to a $6,000 per month Trading Permit Fee.[8] A Floor Broker Trading Permit Holder that requires ten Floor Broker Trading Permits to adequately staff its business is subject to a cost of $60,000 per month for Trading Permit Fees (totaling $720,000 per year). By comparison, a Trading Permit Holder that routes the majority of its orders to PAR Officials for execution and maintains one Trading Permit is subject to a $6,000 per month Trading Permit Fee ($72,000 annually). The existing PAR Official Fee structure that imposes a flat per contract fee does not provide an incentive for firms to adequately staff their business as each Trading Permit Holder is currently assessed the same PAR Official Fees.

As provided above, PAR Officials are intended to provide overflow services to Trading Permit Holders. CBOE never intended PAR Officials to serve as the primary means of execution for order originating firms or executing firms. Heavy reliance on PAR Officials subjects the Exchange to the additional expense and undue strain of providing the additional staffing of PAR Officials. CBOE believes that this proposal will ''level the playing field'' between those Trading Permit Holders that rely incidentally on PAR Officials and those Trading Permit Holders that rely heavily on PAR Officials by basing the PAR Official Fees on an order originating firm's or, as applicable, an executing firm's overall reliance on a PAR Official to conduct their business. Trading Permit Holders that adequately staff their business operations and rely incidentally on PAR Officials are incurring higher costs to retain a sufficient number of Trading Permits and should not be subject to the same amount for PAR Official Fees incurred by a Trading Permit Holder that relies disproportionately on PAR Officials to conduct its floor brokerage business because it does not maintain an adequate number of Trading Permits to conduct its floor brokerage business and further, is not subject to the cost of the additional Trading Permits required to adequately staff its business.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[9] in general, and furthers the objectives of Section 6(b)(4)[10] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange believes the proposed change is equitable, reasonable and not unfairly discriminatory, in that, in general, PAR Official Fees are intended to help the Exchange recover its costs of providing PAR Official services to Trading Permit Holders and the proposed change is intended to reasonably allocate such costs to order originating firms and executing firms based on the amount of business they conduct through PAR Officials. Specifically, the proposed fee tier structure is equitable in that all order originating firms or, as applicable, executing firms, are assessed the same fees at each tier level for orders executed by a PAR Official in Volatility Index Options. CBOE's proposal to establish a tier structure where the lowest tier amount is equivalent to the Floor Brokerage Fees assessed in Volatility Index Options classes is reasonable as CBOE assesses Floor Brokerage Fees in its proprietary products, (including Volatility Index Options classes), and Volatility Index Options classes are the only classes where a PAR Official is available to execute orders at CBOE where Floor Brokerage Fees are also assessed. Further, the proposed fee structure is not unfairly discriminatory because the tiers are based on the percentage of activity executed by a PAR Official. Each firm has the ability to route fewer orders to a PAR Official in Volatility Index Options, such that they are not subject to higher PAR Official Fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(2) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is

[7] *See* Securities Exchange Act Release No. 64217 (April 6, 2011), 76 FR 20793 (April 13, 2011) (SR–CBOE–2011–030).

[8] *See* CBOE Fees Schedule, Section 10.

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

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2011–057 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–057. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–057 and should be submitted on or before August 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17791 Filed 7–14–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64851; File No. SR–CBOE–2011–062]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Fees Schedule Regarding Automated Improvement Mechanism Fees

July 11, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2011, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule regarding Automated Improvement Mechanism (''AIM'') fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule regarding broker-dealer Automated Improvement Mechanism orders. Specifically, the Exchange proposes to adopt a $0.20 per contract fee to be applied to broker-dealer orders entered as the agency/primary side of an AIM transaction (the ''Broker-Dealer AIM Agency Fee'') and make related clarifying changes to the Fees Schedule.[3]

On June 13, 2011, the Commission approved a proposed rule change to allow the Exchange to establish the Qualified Contingent Cross (''QCC'') order type.[4] In conjunction with that approval, on June 29, 2011, the Exchange filed, for immediate effectiveness, a proposed rule change to adopt fees related to the QCC order type.[5] Included in that proposed rule change is a proposal to adopt a $0.20 per contract transaction fee for the execution of broker-dealer QCC orders (the ''Broker-Dealer QCC Fee''). The Exchange intends to make available the QCC order type and make effective the related fees, including the Broker-Dealer QCC Fee, on July 1, 2011.

Like QCC, AIM involves the crossing of paired orders. AIM can be used to cross options orders through an exposed auction process. QCC can be used to cross options orders in an unexposed procedure, as long as the orders are tied to stock in a manner consistent with

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the Exchange proposes to add footnote 19 to the Fees Schedule to define the AIM Agency/Primary Fee as applying to all broker-dealer orders in all products, except volatility indexes, executed in AIM that were initially entered into AIM as a Primary/Agency Order (*i.e.,* the ''AIM Agency/Primary'' fee applies to the original order submitted to AIM that is being facilitated if such order is for a broker-dealer and does not involve a volatility index). The AIM Agency/Primary Fee will apply to such executions instead of the applicable standard transaction fee except in volatility indexes where standard transaction fees will apply. As discussed below, the ''AIM contra execution fee'' applies to the contra party's side of the trade (*i.e.,* the contracts submitted by the participant that is facilitating the order). *See* email from Jeff Dritz, Attorney, CBOE to Arisa Tinaves, Special Counsel, Division of Trading and Markets, dated July 7, 2011.

[4] *See* Securities Exchange Act Release No. 64653 (June 13, 2011), 76 FR 35491 (June 17, 2011) (SR–CBOE–2011–041) and CBOE Rule 6.53(u).

[5] *See* SR–CBOE–2011–058.

Rule 6.53(u).[6] Therefore, in the case of options orders that are represented as tied to a stock transaction, broker-dealers can elect to use either the QCC or the AIM mechanism to cross orders.

Currently, the transaction fee for broker-dealers to execute the agency/primary side of an AIM order is $0.45 per contract (as such orders are entered electronically). However, the Broker-Dealer QCC Fee is $0.20. While there are differences between using QCC and AIM, they can both be used for the execution of paired orders. Therefore, the Exchange proposes to adopt the Broker-Dealer AIM Agency Fee of $0.20 in order to place AIM on an equal competitive footing with QCC regarding the entrance of broker-dealer orders. The Exchange does not want cost to discourage broker-dealers from using the exposed auction mechanism and encourage them to use the QCC mechanism.

Additionally, the amount of the Broker-Dealer AIM Agency Fee of $0.20 per contract is competitive with similar fees charged by other exchanges.[7]

The Exchange also proposes to make clarifying changes to the Fees Schedule related to AIM fees. Specifically, the Exchange proposes to clarify that the current AIM Execution Fee applies only to the contra party to the AIM Agency/Primary Order by changing the title of the fee to the ''AIM Contra Execution Fee.'' While the footnote describing the AIM Execution Fee explains this fact, the modification of the title is more descriptive for users and will help to distinguish this existing fee in the Fees Schedule from the new AIM Agency/Primary Order fee for broker-dealer orders that is discussed above.

The Exchange also proposes to make a non-substantive technical correction to the Fees Schedule. Under the Broker-Dealer Index Options Transaction Fees in Section 1, the first bullet point lists the per-contract fee for transactions in OEX, XEO, SPX, S&P 500 Divided Index and Volatility Indexes. It should read ''S&P 500 Dividend Index'', not ''S&P 500 Divided Index.'' The Exchange proposes to correct this inadvertent error by adding the letter ''n'' in the correct place to make the word ''Dividend.''

The proposed rule change will take effect on July 1, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4)[9] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using Exchange facilities. Adopting a fee of the same amount per contract for broker-dealer orders entered as the agency/primary side of an AIM transaction as is charged for the execution of broker-dealers QCC orders is an equitable allocation of reasonable fees because both AIM and QCC are mechanisms that can be used for the execution of paired orders and the equivalent fee puts the two on a level competitive footing. Further, the amount of the proposed fee is competitive with similar fees charged by other exchanges.[10]

In amending the Fees Schedule to change the title of the ''AIM Execution Fee'' to the ''AIM Contra Execution Fee,'' and making a non-substantive technical correction, the proposed rule change is more descriptive for users and should help to distinguish this existing fee from the new AIM Agency/Primary Order Execution Fee, and avoids any potential confusion about the applicability of the fees. These technical changes, which are designed to make the Fees Schedule more descriptive and avoid confusion, further the objectives of Section 6(b)(5)[11] of the Act in particular, in that they remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(2) of Rule 19b–4[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–062. 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

[6] *See* CBOE Rule 6.53(u).

[7] The International Securities Exchange, LLC (''ISE'') charges $0.20 per contract for similar orders transacted through its Price Improvement Mechanism. *See* ISE Schedule of Fees, page 16–17.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Note 7.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–062, and should be submitted on or before August 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17794 Filed 7–14–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64857; File No. SR–NYSEArca–2011–45]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Amend NYSE Arca Equities Rule 7.31(b) To Add Text Describing How Limit Orders Priced a Specified Percentage Away From the National Best Bid or Offer Will Be Rejected by Exchange Systems

July 12, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 6, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(b) to add text describing how limit orders priced a specified percentage away from the national best bid or offer will be rejected by Exchange systems. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, *http://www.nyse.com*, and *http://www.sec.gov*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(b) to add text describing how limit orders priced a specified percentage away from the national best bid or national best offer will be rejected by Exchange systems. The Exchange believes that the proposed treatment of limit orders serves as an additional safeguard that could help limit potential harm from extreme price volatility by preventing executions that could occur at a price significantly away from the contra side national best bid or national best offer.

As proposed, the Exchange will reject limit orders that are priced a specified percentage away from the contra side national best bid or national best offer, as defined in Rule 600(b)(42) of Regulation NMS. As the Exchange receives limit orders, Exchange systems will check the price of the limit order against the contra-side national best bid (''NBB'') or national best offer (''NBO'') at the time of the order entry to determine whether the limit order is within the specified percentage.

As proposed, the specified percentage will be equal to the corresponding ''numerical guideline'' percentages set forth in paragraph (c)(1) of Rule 7.10 (Clearly Erroneous Executions) that are used for the Core Trading Sessions. Accordingly, the specified percentage will be 10% if the NBB or NBO is $25.00 and below, 5% if the NBB or NBO is between $25.01 and $50.00, and 3% if the NBB or NBO is greater than $50.00. If the limit order is priced outside of the specified percentage, the limit order will be rejected. For example, if the NBB is $26.00, a sell order priced at or below $24.70, which is 5% below the NBB, would be rejected. Likewise, if the NBO is $55.00, a buy order priced at or above $56.65, which is 3% above the NBO, would be rejected.

The Exchange believes that this mechanism will prevent the entry of super-marketable limit orders, *i.e.*, limit orders that in essence act like market orders because they are priced so far away from the prevailing market price that could cause significant price dislocation in the market. The Exchange also believes that this mechanism will further serve to mitigate the potential for clearly erroneous executions to occur.

2. *Statutory Basis*

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[4] which requires the rules of an exchange 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)[5] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it ensures that limit orders will not cause the price of a security to move beyond prices that could otherwise be determined to be a clearly erroneous execution, thereby protecting investors from receiving executions away from the prevailing prices at any given time.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78k–1(a)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay to permit the Exchange to implement this proposal without delay is consistent with the protection of investors and the public interest.[12] The Exchange noted that it is prepared to deploy this technology change immediately and this change would not require ETP Holders to make system changes. The Commission notes that the proposed rule change may reduce the potential for price dislocation and clearly erroneous executions. Waiving the 30-day delayed operative date will enable the Exchange to implement immediately the proposed functionality to achieve these goals and to enhance investor protection. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2011–45 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 No. SR–NYSEArca–2011–45. 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 NYSE Arca. 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 No. SR–NYSEArca–2011–45 and should be submitted on or before August 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17871 Filed 7–14–11; 8:45 am]

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[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[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 the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64856; File No. SR–NASDAQ–2011–092]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Fee Pilot Program for NASDAQ Last Sale

July 12, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2011, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to extend for three months the fee pilot pursuant to which NASDAQ distributes the NASDAQ Last Sale (''NLS'') market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the ''NASDAQ Last Sale for NASDAQ'' and ''NASDAQ Last Sale for NYSE/Amex'' data feeds containing last sale activity in US equities within the NASDAQ Market Center and reported to the jointly-operated FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''), which is jointly operated by NASDAQ and the Financial Industry

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Regulatory Authority (''FINRA''). The purpose of this proposal is to extend the existing pilot program for three months, from July 1, 2011 through September 30, 2011.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on Web sites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7039. NASDAQ Last Sale Data Feeds

(a) For a three month pilot period commencing on [April] *July* 1, 2011, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1)–(2) No change.

(b)–(c) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data at no cost to millions of internet users and television viewers. NASDAQ now proposes a three-month extension of that pilot program, subject to the same fee structure as is applicable today.[3]

NLS consists of two separate ''Level 1'' products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the ''NASDAQ Last Sale for NASDAQ'' data product is a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the ''NASDAQ Last Sale for NYSE/Amex'' data product provides real-time last sale information including execution price, volume, and time for NYSE- and NYSE Amex-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. By contrast, the securities information processors (''SIPs'') that provide ''core'' data consolidate last sale information from all exchanges and trade reporting facilities (''TRFs''). Thus, NLS replicates a subset of the information provided by the SIPs.

NASDAQ established two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems and/or quote counting mechanisms are eligible for a specified fee schedule for the NASDAQ Last Sale for NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/Amex Product. Firms that are unable to maintain username/password entitlement systems and/or quote counting mechanisms also have multiple options for purchasing the NASDAQ Last Sale data. These firms choose between a ''Unique Visitor'' model for Internet delivery or a ''Household'' model for television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third-party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion. In addition, to reflect the growing confluence between these media outlets, NASDAQ offered a reduction in fees when a single distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms.

Second, NASDAQ established a cap on the monthly fee, currently set at $50,000 per month for all NASDAQ Last Sale products. The fee cap enables NASDAQ to compete effectively against other exchanges that also offer last sale data for purchase or at no charge.

As with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/Amex products pay a single $1,500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The $1,500 monthly fee applies to all distributors and does not vary based on whether the distributor distributes the data internally or externally or distributes the data via both the Internet and television.

2. Statutory Basis

NASDAQ 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)(4) of the Act,[5] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data. In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers (''BDs'') increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

NASDAQ believes that its NASDAQ Last Sale market data products are precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center

[3] NASDAQ previously stated that it would file a proposed rule change to make the NLS pilot fees permanent. NASDAQ has also informed Commission staff that it is consulting with FINRA to develop a proposed rule change by FINRA to allow inclusion of FINRA/NASDAQ TRF data in NLS on a permanent basis. Based on the progress of these discussions, NASDAQ expects that it and FINRA will both submit filings to make NLS permanent prior to the expiration of the three-month pilot period.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[6]

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC* [sic], 615 F.3d 525 (D.C. Cir. 2010), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

NetCoaltion [sic], at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[7]

The Court in *NetCoalition,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSEArca's data product at issue in that case. As explained below in NASDAQ's Statement on Burden on Competition, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition* case, and that the Commission is entitled to rely upon such evidence in concluding that the fees established in this filing are the product of competition, and therefore in accordance with the relevant statutory standards.[8] Moreover, NASDAQ further notes that the product at issue in this filing—a NASDAQ last sale data product that replicates a subset of the information available through ''core'' data products whose fees have been reviewed and approved by the SEC—is quite different from the NYSEArca depth-of-book data product at issue in *NetCoalition.* Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ's ability to price its Last Sale Data Products is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to ''upgrade'' the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.*, if the software can be downloaded over the internet after being purchased).[9] In NASDAQ's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing order are *the* source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, NASDAQ would be unable to defray its platform costs of providing the joint products.

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[7] *NetCoaliton* [sic], at 535.

[8] It should also be noted that Section 916 of Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3) to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. Although this change in the law does not alter the Commission's authority to evaluate and ultimately disapprove exchange rules if it concludes that they are not consistent with the Act, it unambiguously reflects a conclusion that market data fee changes do not require prior Commission review before taking effect, and that a formal proceeding with regard to a particular fee change is required only if the Commission determines that it is necessary or appropriate to suspend the fee and institute such a proceeding.

[9] *See* William J. Baumol and Daniel G. Swanson, ''The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,'' *Antitrust Law Journal,* Vol. 70, No. 3 (2003).

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NLS that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail BDs, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, NASDAQ believes that products such as NLS can enhance order flow to NASDAQ by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. NASDAQ pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including thirteen SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, NYSEArca, BATS, and Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NLS, the data provided through that product appears both in (i) real-time core data products offered by the SIPs for a fee, and (ii) free

SIP data products with a 15-minute time delay, and finds a close substitute in last-sale products of competing venues.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. Today, BATS and Direct Edge provide data at no charge in order to attract order flow, and use market data revenue rebates from the resulting executions to maintain low execution charges for their users. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available *at no cost* with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

The competitive nature of the market for products such as NLS is borne out by the performance of the market. In May 2008, the internet portal Yahoo! began offering its website viewers real-time last sale data (as well as best quote data) provided by BATS Trading. In response, in June 2008, NASDAQ launched NLS, which was initially subject to an ''enterprise cap'' of $100,000 for customers receiving only one of the NLS products, and $150,000 for customers receiving both products. The majority of NASDAQ's sales were at the capped level. In early 2009, BATS expanded its offering of free data to include depth-of-book data. Also in early 2009, NYSEArca announced the launch of a competitive last sale product with an enterprise price of $30,000 per month. In response, NASDAQ combined the enterprise cap for the NLS products and reduced the cap to $50,000 (*i.e.,* a reduction of $100,000 per month). Although each of these products offers only a specific subset of data available from the SIPs, NASDAQ believes that the products are viewed as substitutes for each other and for core last-sale data, rather than as products that must be obtained in tandem. For example, while the internet portal Yahoo! continues to disseminate only the BATS last sale product, Google disseminates only NASDAQ's product.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of NLS would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting NLS data revenues, the value of NLS as a tool for attracting order flow, and ultimately, the volume of orders routed to NASDAQ and the value of its other data products.

In establishing the price for the NASDAQ Last Sale Products, NASDAQ considered the competitiveness of the market for last sale data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to NLS, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the NLS product in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Three comment letters were filed regarding the proposed rule change as originally published for comment. NASDAQ responded to these comments in a letter dated December 13, 2007. Both the comment letters and NASDAQ's response are available on the SEC Web site at *http://www.sec.gov/comments/sr-nasdaq-2006-060/nasdaq2006060.shtml.* In addition, in response to a prior filing to extend the NLS pilot,[10] the Securities Industry and Financial Markets Association (''SIFMA'') and NetCoalition filed a comment letter contending that the SEC should suspend and institute disapproval proceedings with respect to the filing. The letter incorrectly asserts that the *NetCoalition* case stands for the proposition that the Commission must review cost data to substantiate a determination that competitive forces constrain the price of market data. In fact, the court held the opposite:

The petitioners believe that the SEC's market-based approach is prohibited under the Exchange Act because the Congress intended ''fair and reasonable'' to be determined using a cost-based approach. The SEC counters that, because it has statutorily-granted flexibility in evaluating market data fees, its market-based approach is fully consistent with the Exchange Act. We agree with the SEC.[11]

[10] Securities Exchange Act Release No. 64188 (April 5, 2011), 76 FR 20054 (April 11, 2011) (SR–NASDAQ–2011–044).

[11] *NetCoalition,* 615 F3d. at 534. While the court noted that cost data could sometimes be relevant in determining the reasonableness of fees, it acknowledged that submission of cost data may be inappropriate where there are ''difficulties in calculating the direct costs * * * of market data,'' *Id.* at 539. That is the case here, due to the fact that the fixed costs of market data production are inseparable from the fixed costs of providing a

Continued

SIFMA and NetCoalition further contend the prior filing lacked evidence supporting a conclusion that the market for NLS is competitive, asserting that arguments about competition for order flow and substitutability were rejected in *NetCoalition.* While the court did determine that the record before it was not sufficient to allow it to endorse those theories on the facts of that case, the court did not itself make any conclusive findings about the actual presence or absence of competition or the accuracy of these theories: Rather, it simply made a finding about the state of the SEC's record. Moreover, analysis about competition in the market for depth-of-book data is only tangentially relevant to the market for last sale data. As discussed above and in the prior filing, perfect and partial substitutes for NLS exist in the form of real-time core market data, free delayed core market data, and the last sale products of competing venues, additional competitive entry is possible, and evidence of competition is readily apparent in the pricing behavior of the venues offering last sale products and the consumption patterns of their customers. Thus, although NASDAQ believes that the competitive nature of the market for all market data, including depth-of-book data, will ultimately be established, SIFMA and NetCoalition's letter not only mischaracterizes the *NetCoalition* decision, it also fails to address the characteristics of the product at issue and the evidence already presented.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12] 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–NASDAQ–2011–092 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–092. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–092 and should be submitted on or before August 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17870 Filed 7–14–11; 8:45 am]

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trading platform, and the marginal costs of market data production are minimal or even zero. Because the costs of providing execution services and market data are not unique to either of the provided services, there is no meaningful way to allocate these costs among the two ''joint products''—and any attempt to do so would result in inherently arbitrary cost allocations.

The court explicitly acknowledged that the ''joint product'' theory set forth by NASDAQ's economic experts in *NetCoalition* (and also described in this filing) could explain the competitive dynamic of the market and explain why consideration of cost data would be unavailing. The court found, however, that the Commission could not rely on the theory because it was not in the Commission's record. *Id.* at 541 n.16. For the purpose of providing a complete explanation of the theory, NASDAQ is further submitting as Exhibit 3 to this filing a study that was recently submitted to the Commission in SR–NASDAQ–2010–174. *See* Statement of Janusz Ordover and Gustavo Bamberger at 2–17 (December 29, 2010).

[12] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64853; File No. SR–ISE–2011–39]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Complex Orders

July 11, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') 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 Substance of the Proposed Rule Change

The Exchange proposes to provide for market maker quotes for complex orders, add an additional methodology for execution priority on the complex order book, and provide for enhanced allocations to designated market makers in certain circumstances. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt enhancements to its complex order functionality that it believes will encourage market makers to provide additional liquidity in complex order strategies on the complex order book. First, the Exchange proposes to enable market makers to enter quotes for complex order strategies on the complex order book in the same manner as they do for single-leg orders in the regular market [3] and to make the same risk management tools available for such quotes as are currently available in the regular market.[4] The Exchange believes that market makers may prefer to use their existing quotation systems to enter quotes for complex order strategies rather than entering orders, thereby encouraging greater liquidity on the complex order book.[5] Quoting on the complex order book would be completely voluntary and limited to options classes to which the market maker is appointed. In this respect, the Exchange notes that there are no existing requirements that market makers provide liquidity on the complex order book, and the proposed rule specifies that market makers who choose to enter quotes for complex order strategies in their appointed options classes are not subject to the market maker quotation requirements applicable in the regular market. The proposed rule also specifies that complex order volume executed by market makers is not taken into consideration when determining whether market makers are meeting their quotation obligations with respect to the regular market.

The Exchange seeks to encourage market makers to provide additional liquidity on the complex order book by providing them with the ability to quote complex order strategies on the complex order book. At the same time, the Exchange recognizes that market makers could encounter difficulties maintaining quotations on the complex order book if such quotes were allowed to execute against (*i.e.*, ''leg-into'') the regular market. In particular, market maker pricing systems automatically update the price of a market maker's quotations when there is a move in the price of an underlying security. When such a change occurs, a market maker will need to send updates for its quotes in the regular market and also send updates for its quotes in the complex order book. Accordingly, it is possible that market makers could unintentionally trade with their own quotes or the quotes of other market makers in the regular market before the quote update in the complex order book is processed (or vice versa).[6]

Therefore, under the proposal, the system will not automatically execute market maker quotes against bids and offers on the Exchange for the individual legs of the complex order strategy.[7] The Exchange believes that this is a reasonable limitation on market maker quotations that will appropriately address an operational issue that would discourage market makers from offering additional liquidity on the complex order book to the benefit of customers that seek to execute such multi-leg strategies. The Exchange also notes that market maker quotes cannot be marked for price improvement, as that would further disrupt the quoting function.[8] Market makers are not restricted in any way from entering orders marked for price improvement if they so chose [sic].

The Exchange also proposes to add a third method of execution priority for bids and offers on the complex order book at the same price. Currently, the Exchange may designate on a class basis whether bids and offers at the same price are executed: (i) In time priority; or (2) pro-rata based on size after all Priority Customer Orders at the same price are executed in full.[9] The Exchange proposes to also have the flexibility to determine, on a class basis, whether all bids and orders on the complex order book at the same price are executed pro-rata based on size. Under this proposed method, Priority Customer Orders would receive a pro-rata allocation along with all other orders and quotes at the same price.

The Exchange believes that market participants may be encouraged to provide more liquidity for complex order strategies if all liquidity at the same price participates in the execution of incoming orders on an equal basis. Moreover, while the Exchange believes there is a basis under the Securities Exchange Act of 1934 (the ''Act'') for allowing Priority Customers to be treated differently than professional trading interest as the Exchange currently does in its regular market, such preferential treatment is not required under the Act. Indeed, under the Exchange's existing price-time execution methodology for orders on the complex order book, Priority Customers are not given preferential treatment. The Exchange further notes that this proposed rule change addresses priority among bids and offers for complex order strategies on the complex order book only, and does not affect the provisions of paragraph (b)(2) of Rule 722, which limits the execution of complex orders when there are Priority Customer Orders on the Exchange for the individual series of a complex order.

Finally, for options classes that are allocated pro-rata based on size with Priority Customer Order priority, the Exchange proposes to provide enhanced allocations to market makers designated by the entering member (a ''Preferred Market Maker''). Under the proposal, a Preferred Market Maker would receive the same enhanced allocation on the complex order book provided for Preferred Market Makers in the regular market. Specifically, a Preferred Market Maker would receive an allocation equal to the greater of: (i) The proportion of the total size at the best price represented by the size of its quote, or

[3] Quotes may only be entered by market makers. ISE Rule 100(a)(42).

[4] The Exchange adopted changes to ISE Rule 804 to reflect the enhanced risk management tools that will be available for market maker quotes in the Optimise platform in the regular market. Securities Exchange Act Release No. 63117 (October 15, 2010), 75 FR 65042 (October 21, 2010) (SR–ISE–2010–101).

[5] Quotes and orders are processed as they are received by the trading system. Quotes are not processed any more quickly than orders.

[6] Indeed, ISE has long recognized the need to ameliorate small timing differences in processing market maker quotation updates by delaying market maker quotations from executing against each other for up to one second. ISE Rule 804(d)(2). The Exchange believes the restriction on complex order quotes legging-into the regular market is directly analogous.

[7] Pursuant to ISE Rule 722(b)(3)(ii), the ISE's trading system monitors the Exchange's regular market for the individual series that comprise the complex order and automatically executes the individual legs of a complex order against the ISE best bid or offer when the prices and sizes can satisfy the terms of the order.

[8] Pursuant to ISE Rule 722(b)(3)(iii), complex orders that are marked for price improvement are exposed on the complex order book for a period of up to one-second before being automatically executed.

[9] ISE Rule 722(b)(3)(i).

(ii) sixty percent of the contracts to be allocated if there is only one other professional complex order or market maker quotes at the best price, and forty percent if there are two or more other professional complex orders and/or market maker quotes at the best price. Preferred Market Makers on the complex book must comply with their quoting obligations in the regular market, including the enhanced quoting requirements in Rule 804(e)(2)(ii) applicable to Competitive Market Makers that receive Preferenced Orders.[10] This means, among other things, that market makers must be quoting at least 90% of the series of an options class in the regular market to receive an enhanced allocation on the complex order book.[11]

2. Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b),[12] in general, and Section 6(b)(5) [13] in particular, that an exchange have rules that are 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange Believes [sic] that customer [sic] would benefit from enhanced liquidity on the complex order book.

In particular, the Exchange believes that giving market makers the ability to enter quotes for complex order strategies on the complex order book and to utilize market maker risk management tools could increase the liquidity available for investors that place complex orders on the Exchange. The Exchange believes it is necessary to assure the smooth operation of quotes on the complex order [sic] by preventing such quotations from legging into the regular market like orders. In this respect, entering quotations will be completely voluntary, so that a market maker could choose to offer liquidity though the posting of orders if it wanted the opportunity to leg-into the market. Therefore, the Exchange does not think it is unreasonably discriminatory to prevent market makers from legging-into the market.

Moreover, the Exchange does not believe it is unreasonably discriminatory to make the ability to quote on the complex order book available only to market makers that are appointed to the options class in the regular market. Indeed, under the ISE membership structure, only those members that own or lease market maker memberships are permitted to enter quotes in the regular market. Allowing other market participants to quote on the complex order book would be inconsistent with this membership structure. Notwithstanding, the Exchange is not aware of any demand from non-market maker participants to quote on the complex order book. Indeed, the Exchange is proposing to implement this rule change on a voluntary basis precisely because it believes a mandatory quoting requirement for complex order [sic] would discourage members from participating on the Exchange as market makers in the regular market.

The Exchange also notes that orders resting on the book in the regular market may not receive an execution when quotes on the complex order book are prevented from legging in. Complex orders are contingency transactions, and prices posted on the complex order book are not firm, nor included in the national market system. The Exchange attempts to provide better execution quality for complex orders resting on the complex order book by seeking to satisfy the contingency with individual orders in the regular market when possible. The Exchange notes, however, that this is an enhanced execution service that has been developed only in the last few years. While exchanges have always prohibited the execution of complex orders at prices that would trade through the best bids and offers on the exchange, or at the same price as public customer orders on the regular book in certain circumstances, there has never been a regulatory requirement to integrate potential liquidity on the complex order book with the regular market. As discussed above, the Exchange believes it is operationally necessary to prevent market maker quotes from legging-into the regular market; otherwise, market makers will not be able to quote on the complex order book. Moreover, customers in the regular market are not being discriminated against, as the very same market makers provide liquidity in the regular market. Accordingly, the proposal will provide benefits to customers that use complex strategies, while not degrading the execution quality of customer orders in the regular market.

The Exchange further believes that liquidity on the complex order book may be enhanced by executing all interest at the same price pro-rata based on size. In this respect, the Exchange notes that Priority Customers are not given preferential treatment under the existing price-time methodology and that Priority Customer orders would be treated equally with all other trading interest at the same price under the pro-rata based on size methodology. Having the ability to determine on a class basis whether bids and offers on the complex order book at the same price will be executed in time priority, pro-rata based on size with Priority Customer Priority, or pro-rata based on size without Priority Customer Priority will give the Exchange greater flexibility to respond to market needs and enhance its ability to compete more effectively.

Finally, the Exchange believes that its proposal to give Preferred Market Makers enhanced allocations is designed to protect priority customers and to be consistent with Commission policy with respect to execution guarantees. In particular, as in the regular market, Preferred Market Makers will only receive enhanced allocations of complex orders in options classes in which Priority Customer Orders are given priority over all other interest at the same price. Additionally, the potential for enhanced allocations is limited to only those market makers that are providing liquidity in at least 90% of the series in the options class in the regular market. The Exchange believes that providing the opportunity to receive enhanced allocations might incentivize market makers to provide additional liquidity on the complex order book and potentially provide incentive [sic] for additional market makers to quote at the higher requirement in the regular market for the options class.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any

[10] Electronic Access Members and Preferred Market Makers may not coordinate their actions. Such conduct would be a violation of Rule 400 (Just and Equitable Principles of Trade). The Exchange will proactively conduct surveillance for, and enforce against, such violations. See Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (Order Approving SR–ISE–2005–18) at footnote 10.

[11] The Chicago Board Options Exchange also permits preferencing of complex orders. CBOE Rule 8.13(d), Interpretations and Policies .01.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) As the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–39 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–ISE–2011–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–39 and should be submitted on or before August 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17797 Filed 7–14–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64850; File No. SR–CHX–2011–16]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Alter Its Fee Schedule To Increase its SRO, DEA and Off-Exchange Trader Fees

July 11, 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 June 30, 2011, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Schedule of Participant Fees and Assessments (the ''Fee Schedule''), effective July 1, 2011, to alter its schedule of fees for Participants relating to its SRO, Off-Exchange trader and DEA fees. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm* and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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

Through this filing, the Exchange proposes to amend its Schedule of Participant Fees and Assessments (the ''Fee Schedule''), effective July 1, 2011, to amend its existing SRO, Off-Exchange trader and DEA fees. These fee changes are being proposed in response to the increased importance and expense of the Exchange's regulatory efforts and competitive pricing pressures.

The Exchange proposes to increase both its SRO and DEA fees to reflect increased current and planned expenses related to the Exchange's regulatory responsibilities. Currently, the Exchange's SRO fee is $500 per month for each Participant firm and its DEA fee is $800 per month for each firm for which the Exchange is its DEA. Through this filing, the Exchange proposes increasing the SRO fee to $600 per month for each Participant firm and the DEA fee to $1,000 per month.

Additionally, the Exchange currently charges each off-Exchange Participant firm, that is solely involved in proprietary securities trading and for which the CHX is DEA, a $500 annual fee for each trader. Through this filing, the Exchange proposes to amend its Fee Schedule to allow off-Exchange Participant firms to register two traders at no charge while capping the total annual trader fees payable by each off-Exchange Participant firm at $70,000. The Exchange is proposing this

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

amendment to lower total registration fees for off-Exchange traders to respond to competitive pressures. The Exchange believes that these changes will further encourage firms of all sizes to utilize its facilities and services.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(4) of the Act [6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. Among other things, these changes to the fee schedule would equitably allocate fees among Participants by increasing fees overall to reflect higher regulatory costs among all Participants as well as allocating the increased costs associated with the Exchange's DEA service among those Participants which utilize the service. In addition, the proposed changes to the Off-Exchange trader registration fee will allow the Exchange to respond to competitive pressures by lowering trader fees for all off-Exchange proprietary trading firms for which CHX is DEA while encouraging firms of all sizes to utilize the Exchange's facilities and services.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and subparagraph (f)(2) of Rule 19b–4 thereunder [9] because it establishes or changes a due, fee or other charge applicable to the Exchange's members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2011–16 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–CHX–2011–16. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2011–16 and should be submitted on or before August 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17793 Filed 7–14–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] *See* email from James G. Ongena, Vice President and Associate General Counsel, Exchange, to Christopher W. Chow, Special Counsel, Commission, dated July 8, 2011.

[8] 15 U.S.C. 78s(b)(3)(A)(ii)

[9] 17 CFR 240.19b–4(f)(2)

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Aqua Society, Inc., Centurion Gold Holdings, Inc., and PowerRaise, Inc.; Order of Suspension of Trading

July 13, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aqua Society, Inc. because it has not filed any periodic reports since the period ended June 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Centurion Gold Holdings, Inc. because it has not filed any periodic reports since the period ended December 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of PowerRaise, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

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 companies. 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 companies is suspended for the period from 9:30 a.m. EDT on July 13, 2011, through 11:59 p.m. EDT on July 26, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–17972 Filed 7–13–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Maxicare Health Plans, Inc., MetroConnect Inc., Microislet, Inc., Mobicom Corp., MTI Technology Corp., and North American Scientific, Inc.; Order of Suspension of Trading

July 13, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Maxicare Health Plans, Inc. because it has not filed any periodic reports since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MetroConnect Inc. because it has not filed any periodic reports since the period ended December 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Microislet, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities Mobicom Corp. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MTI Technology Corp. because it has not filed any periodic reports since it filed a registration statement on July 7, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of North American Scientific, Inc. because it has not filed any periodic reports since it filed a registration statement on January 31, 2009.

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 companies.

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 companies is suspended for the period from 9:30 a.m. EDT on July 13, 2011, through 11:59 p.m. EDT on July 26, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–17971 Filed 7–13–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Columbus Geographic Systems (GIS) Ltd.; Order of Suspension of Trading

July 13, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Columbus Geographic Systems (GIS) Ltd. because it has not filed any periodic reports since the period ended June 30, 2008.

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 July 13, 2011 through 11:59 p.m. EDT on July 26, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–17970 Filed 7–13–11; 4:15 pm]

BILLING CODE 8011–01–P

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following form has been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Form 1

Title: The Selective Service System Registration Form.

Purpose: Is used to register men and establish a data base for use in identifying manpower to the military services during a national emergency.

Respondents: All 18-year-old males who are United States citizens and those male immigrants residing in the United States at the time of their 18th birthday are required to register with the Selective Service System.

Frequency: Registration with the Selective Service System is a one-time occurrence.

Burden: A burden of two minutes or less on the individual respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of the publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: July 6, 2011.

Lawrence G. Romo,

Director.

[FR Doc. 2011–17673 Filed 7–14–11; 8:45 am]

BILLING CODE 8015–01–M

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at June 23, 2011, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on June 23, 2011, in North East, Maryland, the Commission convened a public hearing, at which it took the following actions: (1) Approved settlement involving one water resources project; (2) approved and tabled the applications of certain water resources projects, including six involving diversions of water into the Susquehanna River Basin; (3) rescinded approval for two water resources projects; (4) denied an administrative appeal by Allegheny Defense Project on three diversions into the Susquehanna River Basin from the Ohio River Basin approved by the Commission at its March 2011 meeting; (5) amended its Regulatory Program Fee Schedule to take effect on July 1, 2011; and (6) amended its comprehensive plan.

DATES: June 23, 2011.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net;* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.* Regular mail inquiries may be sent to the above address. See also Commission Web site at *http://www.srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related actions on projects identified in the summary above and the listings below, the following items were also presented or acted on at the business meeting: (1) Adoption of the proposed Water Resources Program for FY 2012–2013 and an accompanying presentation on the Commission's Chesapeake Bay related activities; (2) a report on hydrologic conditions in the basin; (3) approval of proposed rulemaking to revise the Commission's project review regulations, including the establishment of an August 23, 2011, comment period and the scheduling of public hearings in Harrisburg, Pennsylvania and Binghamton, New York; (4) a preliminary introduction to dockets; (5) a presentation on a pooled assets concept by PPL, Inc.; (6) a report on acquisition of a new SRBC headquarters facility; (7) adoption of a FY–2013 budget commencing July 1, 2012; (8) support of additional FY–2012 funding of U.S. Geological Survey's National Streamflow Information Program; (9) election of the member representing the Commonwealth of Pennsylvania as the new Chair and the member representing the State of Maryland as the new Vice Chair of the Commission to serve in the next fiscal year; and (10) ratification/approval of grants/contracts. The Commission heard counsel's report on legal matters affecting the Commission. The Commission also convened a public hearing and took the following actions:

Public Hearing—Compliance Matter

The Commission approved a settlement in lieu of civil penalties for the following project:

1. Nature's Way Purewater Systems, Inc.; Pittston Facility; Pittston Township, Luzerne County, Pa.—$15,000.

Public Hearing—Rescissions of Project Approvals

1. Project Sponsor and Facility: Anadarko E&P Company LP (West Branch Susquehanna River-2) (Docket No. 20090306), Renovo Borough, Clinton County, Pa.

2. Project Sponsor and Facility: Pennsylvania Food Group, LLC (Docket No. 20030411), West Donegal Township, Lancaster County, Pa.

Public Hearing—Projects Approved

1. Project Sponsor and Facility: Anadarko E&P Company LP (Pine Creek—Jersey Mills), McHenry Township, Lycoming County, Pa. Surface water withdrawal of up to 1.500 mgd.

2. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Monroe Manor Water System, Monroe Township, Snyder County, Pa. Groundwater withdrawal of up to 0.302 mgd from Well 7.

3. Project Sponsor and Facility: Carrizo Marcellus, LLC (Meshoppen Creek), Washington Township, Wyoming County, Pa. Surface water withdrawal of up to 2.160 mgd.

4. Project Sponsor and Facility: Carrizo Marcellus, LLC (Middle Branch Wyalusing Creek), Forest Lake Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.432 mgd.

5. Project Sponsor and Facility: Carrizo Marcellus, LLC (Unnamed Tributary of Middle Branch Wyalusing Creek), Forest Lake Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.720 mgd.

6. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Wappasening Creek), Windham Township, Bradford County, Pa. Surface water withdrawal of up to 0.900 mgd.

7. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Wyalusing Creek), Rush Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.715 mgd, subject to rescission of Docket Nos. 20081227 and 20090610.

8. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Wysox Creek), Rome Township, Bradford County, Pa. Surface water withdrawal of up to 0.504 mgd.

9. Project Sponsor: Exelon Generation Company, LLC. Project Facility: Peach Bottom Atomic Power Station, Peach Bottom Township, York County, Pa. Modification to increase consumptive water use from 32.490 mgd up to 49.000 mgd (Docket No. 20061209).

10. Project Sponsor: Exelon Generation Company, LLC. Project Facility: Three Mile Island Generating Station, Londonderry Township, Dauphin County, Pa. Surface water withdrawal of up to 122.800 mgd and consumptive water use of up to 19.200 mgd.

11. Project Sponsor and Facility: Fox Road Waterworks, LLC (South Branch Tunkhannock Creek), Tunkhannock Township, Wyoming County, Pa. Surface water withdrawal of up to 0.157 mgd.

12. Project Sponsor and Facility: Hydro Recovery, LP, Blossburg Borough, Tioga County, Pa. Groundwater withdrawal of up to 0.216 mgd from Well HR–1 and consumptive water use of up to 0.316 mgd from Well HR–1 and public water supply.

13. Project Sponsor and Facility: Keystone Clearwater Solutions, LLC (Driftwood Branch Sinnemahoning Creek), Emporium Borough, Cameron County, Pa. Surface water withdrawal of up to 0.999 mgd.

14. Project Sponsor and Facility: Keystone Clearwater Solutions, LLC (Lycoming Creek), Lewis Township, Lycoming County, Pa. Surface water withdrawal of up to 1.292 mgd.

15. Project Sponsor and Facility: LHP Management, LLC (Fishing Creek—Clinton Country Club), Bald Eagle Township, Clinton County, Pa. Modification to conditions of the withdrawal approval (Docket No. 20090906).

16. Project Sponsor and Facility: Mount Joy Borough Authority, Mount Joy Borough, Lancaster County, Pa. Groundwater withdrawals of up to 1.227 mgd from Well 1 and 1.165 mgd from Well 2.

17. Project Sponsor and Facility: Nature's Way Purewater Systems, Inc., Dupont Borough, Luzerne County, Pa. Groundwater withdrawal of up to 0.057 mgd from Covington Springs Borehole 1 (BH–1) and consumptive water use of up to 0.257 mgd from BH–1 and public water supply.

18. Project Sponsor: New Morgan Landfill Company, Inc. Project Facility: Conestoga Landfill, New Morgan Borough, Berks County, Pa. Groundwater withdrawal of up to 0.008 mgd from Well SW–3.

19. Project Sponsor and Facility: Seneca Resources Corporation (Genesee Forks), Pike Township, Potter County, Pa. Surface water withdrawal of up to 0.500 mgd.

20. Project Sponsor and Facility: Talisman Energy USA Inc. (Wappasening Creek), Windham Township, Bradford County, Pa. Surface water withdrawal of up to 1.000 mgd.

21. Project Sponsor and Facility: Tennessee Gas Pipeline Company (Meshoppen Creek—Loop 319), Springville Township, Susquehanna County, Pa. Surface water withdrawal of up to 1.090 mgd.

22. Project Sponsor and Facility: Tennessee Gas Pipeline Company

(Susquehanna River—Loop 317), Asylum Township, Bradford County, Pa. Surface water withdrawal of up to 4.032 mgd.

23. Project Sponsor and Facility: Tennessee Gas Pipeline Company (Tioga River—Loop 315), Richmond Township, Tioga County, Pa. Surface water withdrawal of up to 3.140 mgd.

24. Project Sponsor and Facility: Tennessee Gas Pipeline Company (Unnamed Tributary of North Elk Run), Richmond Township, Tioga County, Pa. Surface water withdrawal of up to 0.144 mgd.

25. Project Sponsor and Facility: Tennessee Gas Pipeline Company (Towanda Creek—Loop 317), Monroe Township, Bradford County, Pa. Surface water withdrawal of up to 4.032 mgd.

26. Project Sponsor and Facility: Tennessee Gas Pipeline Company (White Creek—Loop 319), Springville Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.384 mgd.

27. Project Sponsor and Facility: Williamsport Municipal Water Authority, Williamsport City, Lycoming County, Pa. Groundwater withdrawals of up to 1.300 mgd from Well 10 and 0.700 mgd from Well 11.

Public Hearing—Projects Approved Involving a Diversion

1. Project Sponsor: Chief Oil & Gas LLC. Project Facility: Borough of Ebensburg, Cambria Township, Cambria County, Pa. Into-basin diversion of up to 0.249 mgd from the Ohio River Basin.

2. Project Sponsor: Chief Oil & Gas LLC. Project Facility: Cambria Somerset Authority, Summerhill Township, Cambria County, Pa. Into-basin diversion of up to 0.249 mgd from the Ohio River Basin.

3. Project Sponsor: Chief Oil & Gas LLC. Project Facility: Highland Sewer and Water Authority, Portage Township, Cambria County, Pa. Into-basin diversion of up to 0.249 mgd from the Ohio River Basin.

4. Project Sponsor: Nature's Way Purewater Systems, Inc. Project Facility: Nature's Way Springs Borehole 1 (BH–1), Foster Township, Luzerne County, Pa. Into-basin diversion of up to 0.099 mgd from the Delaware River Basin.

5. Project Sponsor: Penn Virginia Oil & Gas Corporation. Project Facility: Port Allegany Borough, McKean County, Pa. Into-basin diversion of up to 0.100 mgd from the Ohio River Basin.

6. Project Sponsor: Triana Energy, LLC. Project Facility: Johnson Quarry, Roulette Township, Potter County, Pa. Into-basin diversion of up to 0.500 mgd from the Ohio River Basin.

Public Hearing—Projects Tabled

1. Project Sponsor and Facility: Dunn Lake LLC (Dunn Lake), Ararat Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

2. Project Sponsor and Facility: Keystone Clearwater Solutions, LLC (Babb Creek), Morris Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.950 mgd.

3. Project Sponsor: SWEPI, LP. Project Facility: Pennsylvania American Water Company—Warren District, Warren City, Warren County, Pa. Application for an into-basin diversion of up to 3.000 mgd from the Ohio River Basin.

Public Hearing—Projects Withdrawn

1. Project Sponsor and Facility: Anadarko E&P Company LP (West Branch Susquehanna River–4), Burnside Township, Centre County, Pa. Application for surface water withdrawal of up to 0.720 mgd.

2. Project Sponsor and Facility: Anadarko E&P Company LP (Wolf Run), Snow Shoe Township, Centre County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

Public Hearing—Administrative Appeal

The Commission denied an administrative appeal by the Allegheny Defense Project of the March 10, 2011, Commission action approving the following projects:

1. Docket No. 20110316. Project Sponsor: Pennsylvania General Energy Company, L.L.C. Project Facility: Scaffold Lick Pond—1, Liberty Township, McKean County, Pa., authorizing an existing into-basin diversion of up to 0.500 mgd from the Ohio River Basin.

2. Docket No. 20110317. Project Sponsor: Pennsylvania General Energy Company, L.L.C. Project Facility: Scaffold Lick Pond—2, Liberty Township, McKean County, Pa., authorizing an existing into-basin diversion of up to 0.500 mgd from the Ohio River Basin.

3. Docket No. 20110318. Project Sponsor: Ultra Resources, Inc. Project Facility: Wayne Gravel Products, Ceres Township, McKean County, Pa., authorizing an existing into-basin diversion of up to 1.170 mgd from the Ohio River Basin.

Public Hearing—Amendments to Regulatory Program Fee Schedule

The Commission approved amendments to its Regulatory Program Fee Schedule intended to help defray the cost of its Regulatory Program for water resource projects as well as to establish a special rate for multiple transfer of approvals in a single transaction and to make clarifications regarding the application of compliance monitoring fees to administratively approved projects, refunds on withdrawn or terminated applications, and the interest rate on installment payments. The amended fee schedule, which can be accessed at the Commission's web site www.srbc.net, became effective on July 1, 2011.

Public Hearing—Comprehensive Plan Amendments

The Commission amended its comprehensive plan to include the newly adopted Water Resources Program (FY 2012/2013), the Migratory Fish Management and Restoration Plan for the Susquehanna River Basin, and all projects approved by the Commission since the last revision of the Comprehensive Plan.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: July 6, 2011.

Thomas W. Beauduy,

Deputy Executive Director.

[FR Doc. 2011–17922 Filed 7–14–11; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Petition Under Section 302 on Alleged Expropriations by the Dominican Republic; Decision Not To Initiate Investigation

AGENCY: Office of the United States Trade Representative.

ACTION: Decision not to initiate investigation.

SUMMARY: On May 24, 2011, the Office of the United States Trade Representative (USTR) received a petition under Section 302 of the Trade Act of 1974, as amended (''Trade Act''), requesting that the United States Trade Representative (''Trade Representative'') initiate an investigation under sections 301–309 of the Trade Act (''Section 301'') with respect to alleged expropriations without adequate compensation by the Government of the Dominican Republic, resulting in an alleged breach of the Dominican Republic's obligations under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR), as well as being otherwise unreasonable and discriminatory. In accordance with the advice of the interagency Section 301 Committee, the Trade Representative has determined

not to initiate a Section 301 investigation.

DATES: *Effective Date:* July 8, 2011.

FOR FURTHER INFORMATION CONTACT: Jonathan Weinberger, Associate General Counsel, (202) 395–0317; Leslie O'Connor, Deputy Assistant USTR for Central America and the Dominican Republic, (202) 395–5190; Kimberley Claman, Senior Director for Investment Affairs & Financial Services, (202) 395–4510; and William Busis, Deputy Assistant USTR for Monitoring and Enforcement and Chair of the Section 301 Committee, (202) 395–3150.

SUPPLEMENTARY INFORMATION: On May 24, 2011, representatives of two individuals—Mauricio Gadala Maria and Carolina Maratos Gadala Maria—filed a petition requesting that the Trade Representative initiate a Section 301 investigation with respect to alleged expropriations without adequate compensation by the Government of the Dominican Republic. The petition states that Elias Gadala Maria—the father of the two petitioners—was a national of El Salvador who invested in the Dominican Republic in the early 1950s, during the Trujillo regime. The property of Mr. Gadala Maria, according to the petition, was nationalized in 1961 and 1962 following the end of the Trujillo regime. The two petitioners—U.S. nationals who reside in Florida—allege to be heirs of Mr. Gadala Maria, and thus claim a property interest in having the Dominican Republic provide adequate compensation for the alleged expropriations. The petition also alleges that the Government of the Dominican Republic has continued to take actions—as recently as March 2011—that infringe petitioners' property rights.

Petitioners allege that the Government of the Dominican Republic breached its CAFTA–DR obligations to accord ''fair and equitable treatment and full protection and security,'' and to provide ''prompt, adequate and, effective compensation,'' with respect to investments covered by the CAFTA–DR. Petitioners also contend that the Government of the Dominican Republic has acted unreasonably in denying compensation for the alleged expropriations. Petitioners further claim that the government of the Dominican Republic acted in a ''discriminatory'' manner because Mr. Gadala Maria allegedly received less favorable treatment than other investors whose property allegedly was expropriated in 1961/62 at the end of the Trujillo regime.

Pursuant to the advice of the interagency Section 301 Committee, the Trade Representative has determined not to initiate a Section 301 investigation in response to the petition on three separate grounds. First, to the extent that the petition is alleging the expropriation of the property of the petitioners' father—Mr. Gadala Maria—the petition does not allege the expropriation of any property of a U.S. investor because, according to the petition, Mr. Gadala Maria was not a U.S. national. Second, USTR is not in a position to investigate events that occurred five decades ago—well before both the enactment of the Trade Act and the entry into force of the CAFTA–DR—and thus a Section 301 investigation would not be effective in addressing the matters raised in the petition. Third, with regard to more recent acts, policies, and practices of the Dominican Republic that petitioners allege to breach the Dominican Republic's investment obligations under the CAFTA–DR, such allegations can be addressed more effectively and directly through Investor-State dispute resolution under Chapter Ten of the CAFTA–DR, which affords U.S. investors the right to pursue claims for resolution of Investor-State disputes without requiring intervention by the U.S. Government. The merits of any such claims would be determined by an international arbitration panel formed to hear the dispute.

William Busis,

Chair, Section 301 Committee.

[FR Doc. 2011–17807 Filed 7–14–11; 8:45 am]

BILLING CODE 3190–W1–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Petition Under Section 302 on the U.S.-Israel Free Trade Agreement; Decision Not To Initiate Investigation

AGENCY: Office of the United States Trade Representative.

ACTION: Decision not to initiate investigation.

SUMMARY: On May 24, 2011, the Office of the United States Trade Representative (USTR) received a petition pursuant to section 302 of the Trade Act of 1974, as amended (''Trade Act''), requesting that the United States Trade Representative (''Trade Representative'') initiate an investigation under sections 301–309 of the Trade Act (''Section 301'') with respect to alleged conduct of the Government of Israel during the negotiation in the 1980s of the U.S.-Israel Free Trade Agreement (U.S.-Israel FTA). In accordance with the advice of the interagency Section 301 Committee, the Trade Representative has determined not to initiate an investigation in response to the petition.

DATES: *Effective Date:* July 8, 2011.

FOR FURTHER INFORMATION CONTACT: Jonathan Weinberger, Associate General Counsel, (202) 395–0317; Sonia Franceski, Director for Middle East Affairs, (202) 395–4620; or William Busis, Deputy Assistant USTR for Monitoring and Enforcement and Chair of the Section 301 Committee, (202) 395–3150.

SUPPLEMENTARY INFORMATION: On May 24, 2011, an organization entitled the ''Institute for Research: Middle Eastern Policy'' (''IRMEP'') filed a petition pursuant to section 302 of the Trade Act alleging that in 1984, during the negotiation of the U.S.-Israel FTA, the Government of Israel misappropriated business confidential information provided to USTR and the U.S. International Trade Commission by U.S. trade associations, companies, and industries. The petition alleges that the Government of Israel used this information to gain a systemic advantage in the U.S. market, and that this is the cause of the bilateral U.S. trade deficit with Israel. The petition further claims that the alleged misappropriation has diminished the profits of U.S. industry. The petition seeks a $6.64 billion settlement from the Government of Israel, to be divided among U.S. industry groups.

Upon the advice of the interagency Section 301 Committee, the Trade Representative has determined on two separate grounds not to initiate a Section 301 investigation in response to the petition. First, IRMEP—which describes itself as an organization involved in Middle East policy formation—lacks standing to file a petition addressed to an alleged loss of revenue by U.S. companies. The petition provides a diverse list of 76 corporations and industry associations that purportedly opposed the U.S.-Israel FTA in the mid-1980s, and the petition alleges that IRMEP represents ''some'' of those corporations and industry associations. USTR regulations, however, require that a petition affirmatively ''identify the * * * firm or association * * * which petitioner represents and describe briefly the economic interest of the petitioner which is directly affected by'' the matter addressed in the petition. 15 CFR 2006.1(a)(1). The petition fails to do so.

Second, the petition fails to allege the existence of any act, policy, or practice of the Government of Israel that might be actionable under Section 301. Rather, the petition is addressed to an alleged

act by the Government of Israel that occurred over 27 years ago; the petition does not allege that any current acts, policies or practices of the Government of Israel are unjustifiable or unreasonable and burden or restrict U.S. commerce.

William Busis,

Chair, Section 301 Committee.

[FR Doc. 2011–17808 Filed 7–14–11; 8:45 am]

BILLING CODE 3190–W1–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 12, 2011, vol. 76, no. 92, pages 27742–27743.

DATES: Written comments should be submitted by August 15, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0675.

Title: Certification of Airports, 14 CFR part 139.

Form Numbers: FAA Form 5280–1.

Type of Review: Renewal of an information collection.

Background: Information collection requirements contained in the final rule is used by the FAA to determine an airport operator's compliance with Part 139 safety and operational requirements, and to assist airport personnel to perform duties required under the proposed regulation.

Respondents: Approximately 563 airport operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 22 hours.

Estimated Total Annual Burden: 100,132 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public comments invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on June 29, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–300.

[FR Doc. 2011–17209 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Waiver Petition Docket Numbers FRA–2011–0002, CSX Transportation Railroad, and FRA–2004–17565, Union Pacific Railroad; Public Hearing

On February 23, 2011, the Federal Railroad Administration (FRA) published a notice in the **Federal Register** (76 FR 10087) announcing the CSX Transportation Railroad's (CSXT) request for a waiver to operate RailRunner equipment in RailRunner only operations; operate RailRunner equipment commingled with RoadRailer bi-modal equipment; and RailRunner equipment operating behind various conventional railcars. On November 22, 2010, FRA published a notice in the **Federal Register** (75 FR 224) announcing the Union Pacific Railroad's request for an amendment to their existing waiver of certain provisions of the Safety Appliance Standards, Title 49 Code of Federal Regulations (CFR) Part 231, and Power Brakes and Drawbars per 49 CFR part 232 relative to commingling RailRunner equipment with their RoadRailer trains.

FRA has determined upon investigation that the facts of these two proceedings warrant a public hearing. Accordingly, a hearing is hereby scheduled to begin at 10 a.m. on August 3, 2011, at the Courtyard by Marriott Capitol Hill/Navy Yard, 140 L Street, SE., Washington, DC 20003. Interested parties are invited to present oral statements at this hearing. For information on facilities or services for persons with disabilities or to request special assistance at the hearing, contact FRA's Docket Clerk, Jerome Melis-Tull by telephone, e-mail, or in writing at least 5 business days before the date of the hearing. Mr. Melis-Tull's contact information is as follows: FRA, Office of Chief Counsel, Mail Stop 10, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone 202–493–6030; e-mail *Jerome.Melis-Tull@dot.gov.*

The informal hearing will be conducted by a representative designated by FRA in accordance with FRA's Rules of Practice (see particularly 49 CFR 211.25). FRA's representative will make an opening statement outlining the scope of the hearing, as well as any additional procedures for the conduct of the hearing. The hearing will be a non-adversarial proceeding in which all parties will be given the opportunity to express their views regarding the waiver petition(s) without cross-examination. After all initial statements have been completed, those individuals wishing to make rebuttal statements will be given an opportunity to do so.

All communications concerning these proceedings should identify the appropriate docket numbers and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet

at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Page 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on July 12, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–17930 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2011 0096]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before September 13, 2011.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gearhardt, Maritime Administration 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–1867 or E–MAIL: *Elizabeth.Gearhart@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Shipbuilding Orderbook and Shipyard Employment.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0029.

Form Numbers: MA–832.

Expiration Date of Approval: Three years after date of approval by the Office of Management and Budget.

Summary of Collection of Information: In compliance with 46 U.S.C. 50102 (2007), the Merchant Marine Act of 1936, as amended, MARAD conducts this survey to obtain information from the shipbuilding and ship repair industry to be used primarily to determine, if an adequate mobilization base exists for national defense and for use in a national emergency.

Need and Use of the Information: The collection of information is necessary in order for MARAD to perform and carry out its duties required by Sections 210 and 211 of the Merchant Marine Act of 1936.

Description of Respondents: Owners of U.S. shipyards who agree to complete the requested information.

Annual Responses: 800.

Annual Burden: 400 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://regulations.gov*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT (or EST),* Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web *http://regulations.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov*.

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: July 11, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–17851 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2011 0094]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before September 13, 2011.

FOR FURTHER INFORMATION CONTACT: Dennis Brennan, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–1029; or e-mail: dennis.brennan@dot.gov. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Monthly Report of Ocean Shipments Moving Under Export-Import Bank Financing.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0013

Form Numbers: MA–518

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: 46 App. U.S.C. 1241–1, Public Resolution 17, required MARAD to monitor and enforce the U.S.-flag shipping requirements relative to the loans/guarantees extended by the Export-Import Bank (EXIMBANK) to foreign borrowers. Public Resolution 17 requires that shipments financed by Eximbank and that move by sea, must be transported exclusively on U.S.-flag registered vessels unless a waiver is obtained from MARAD.

Need and Use of the Information: The prescribed monthly report is necessary for MARAD to fulfill its responsibilities under Public Resolution 17, to ensure compliance of ocean shipping requirements operating under Eximbank financing, and to ensure equitable distribution of shipments between U.S.-flag and foreign ships. MARAD will use this information to report annually to Congress the total shipping activities during the calendar year.

Description of Respondents: Shippers subject to Eximbank financing.

Annual Responses: 336.

Annual Burden: 168 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT (or EST),* Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://regulations.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://regulations.gov.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: July 11, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–17856 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2011 0095]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before September 13, 2011.

FOR FURTHER INFORMATION CONTACT: Michael Yarrington, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* 202–366–1915 or *e-mail: Michael.Yarrington@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Procedures for Determining Vessel Services Categories for Purposes of the Cargo Preference Act.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0540.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval.

Summary of Collection of Information: The purpose is to provide information to be used in the designation of service categories of individual vessels for purposes of compliance with the Cargo Preference Act under a Memorandum of Understanding entered into by the U.S. Department of Agriculture, U.S. Agency for International Development, and the Maritime Administration.

Need and Use of the Information: The Maritime Administration will use the data submitted by vessel operators to create a list of Vessel Self-Designations and determine whether the Agency agrees or disagrees with a vessel owner's designation of a vessel.

Description of Respondents: Owners or operators of U.S.-registered vessels and foreign-registered vessels.

Annual Responses: 100 responses.

Annual Burden: 800 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://regulations.gov.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *E.D.T. (or E.S.T.),* Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://regulations.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://regulations.gov.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: July 11, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–17848 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA)

AGENCY: Maritime Administration, DOT.

ACTION: Notice of open season for enrollment in the VISA program.

Introduction

The VISA program was established pursuant to section 708 of the Defense Production Act of 1950, as amended (DPA), which provides for voluntary agreements for emergency preparedness programs. VISA was approved for a two year term on January 30, 1997, and published in the **Federal Register** on February 13, 1997, (62 FR 6837). Effective September 30, 2009, the DPA for voluntary agreements and plans of action for preparedness programs was amended to note that each voluntary agreement expires five (5) years after the date it becomes effective. Therefore, approval of the VISA as published in the **Federal Register** on March 24, 2010 (75 FR 14245) is currently extended until October 1, 2014.

As implemented, the VISA program is open to U.S.-flag vessel operators of oceangoing militarily useful vessels, to include tugs and barges. An operator is defined as an owner or bareboat charterer of a vessel. Tug enrollment alone does not satisfy VISA eligibility. Operators include vessel owners and bareboat charter operators if satisfactory signed agreements are in place committing the assets of the owner to the bareboat charterer for purposes of VISA. Voyage and space charterers are

not considered U.S.-flag vessel operators for purposes of VISA eligibility.

VISA Concept

The mission of VISA is to provide commercial sealift and intermodal shipping services and systems, including vessels, vessel space, intermodal systems and equipment, terminal facilities, and related management services, to the Department of Defense (DOD), as necessary, to meet national defense contingency requirements or national emergencies.

VISA provides for the staged, time-phased availability of participants' shipping services/systems to meet contingency requirements through prenegotiated contracts between the Government and participants. Such arrangements are jointly planned with the Maritime Administration, U.S. Transportation Command (USTRANSCOM), and participants in peacetime to allow effective and best valued use of commercial sealift capacity, to provide DOD assured contingency access, and to minimize commercial disruption, whenever possible.

There are three time-phased stages in the event of VISA activation. VISA Stages I and II provide for prenegotiated contracts between DOD and participants to provide sealift capacity to meet all projected DOD contingency requirements. These contracts are executed in accordance with approved DOD contracting methodologies. VISA Stage III will provide for additional capacity to DOD when Stages I and II commitments or volunteered capacity are insufficient to meet contingency requirements, and adequate shipping services from non-participants are not available through established DOD contracting practices or U.S. Government treaty agreements.

VISA Annual Enrollment Open Season

The purpose of this notice is to invite interested, qualified U.S.-flag vessel operators that are not currently enrolled in the VISA program to participate. The annual enrollment is intended to link the VISA enrollment cycle with DOD's peacetime cargo contracting to ensure eligible participants priority consideration for DOD awards of cargo.

Alignment of VISA enrollment and eligibility for VISA priority will solidify the linkage between commitment of contingency assets by VISA participants and receiving VISA priority consideration for the award of DOD peacetime cargo. This is the only planned enrollment period for carriers to join the VISA program and derive benefits for DOD peacetime contracts during the time frame of October 1, 2011 through September 30, 2012. The only exception to this open season period for VISA enrollment will be for a non-VISA carrier that reflags a vessel into U.S. registry. That carrier may submit an application to participate in the VISA program at any time upon completion of reflagging.

Advantages of Peacetime Participation

Because enrollment of carriers in the VISA program provides DOD with assured access to sealift services during contingencies based on a level of commitment, as well as a mechanism for joint planning, DOD awards peacetime cargo contracts to VISA participants on a priority basis. This applies to liner trades and charter contracts alike. Award of DOD cargoes to meet DOD peacetime and contingency requirements is made on the basis of the following priorities:

- U.S.-flag vessel capacity operated by VISA participants and U.S.-flag Vessel Sharing Agreement (VSA) capacity held by VISA participants.
- U.S.-flag vessel capacity operated by non-participants.
- Combination U.S.-flag/foreign-flag vessel capacity operated by VISA participants, and combination U.S.-flag/foreign-flag VSA capacity held by VISA participants.
- Combination U.S.-flag/foreign-flag vessel capacity operated by non-participants.
- U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by VISA participants.
- U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by non-participants.
- Foreign-owned or operated foreign-flag vessel capacity of non-participants.

Participation

Any U.S.-flag vessel operator organized under the laws of a state of the United States, or the District of Columbia, who is able and willing to commit militarily useful sealift assets and assume the related consequential risks of commercial disruption, may be eligible to participate in the VISA program. The term ''operator'' is defined in the VISA document as ''an ocean common carrier or contract carrier that owns, controls or manages vessels by which ocean transportation is provided.'' Applicants wishing to become participants must provide satisfactory evidence that the vessels being committed to the VISA program are operational and that vessels are intended to be operated by the applicant in the carriage of commercial or government preference cargoes. While vessel brokers, freight forwarders and agents play an important role as a conduit to locate and secure appropriate vessels for the carriage of DOD cargo, they may not become participants in the VISA program due to lack of requisite vessel ownership or operation. However, brokers, freight forwarders and agents should encourage the carriers they represent to join the program.

Commitment

Any U.S.-flag vessel operator desiring to receive priority consideration in the award of DOD peacetime contracts must commit no less than 50 percent of its total U.S.-flag militarily useful capacity in Stage III of the VISA program. Participants operating vessels in international trade may receive top tier consideration in the award of DOD peacetime contracts by committing the minimum percentages of capacity to all three stages of VISA or bottom tier consideration by committing the minimum percentage of capacity to only Stage III of VISA. USTRANSCOM and the Maritime Administration will coordinate to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse national economic impact. To minimize domestic commercial disruption, participants operating vessels exclusively in the domestic Jones Act trades are not required to commit the capacity of those U.S. domestic trading vessels to VISA Stages I and II. Overall VISA commitment requirements are based on annual enrollment.

In order to protect a U.S.-flag vessel operator's market share during contingency activation, VISA allows participants to join with other vessel operators in Carrier Coordination Agreements (CCAs) to satisfy commercial or DOD requirements. VISA provides a defense against antitrust laws in accordance with the DPA. CCAs must be submitted to the Maritime Administration for coordination with the Department of Justice for approval, before they can be utilized.

Vessel Position Reporting

If VISA applicants have the capability to track their vessels, they must state which system is used in their VISA application and will be required to provide the Maritime Administration with access to their vessel tracking systems upon approval of their VISA application. If VISA applicants do not have a tracking system, they must indicate this in their VISA application. The VISA program requires enrolled ships to comply with 46 CFR part 307,

Establishment of Mandatory Position Reporting System for Vessels.

Compensation

In addition to receiving priority in the award of DOD peacetime cargo, a participant will receive compensation during contingency activation for that capacity activated under Stage I, II and III. The amount of compensation will depend on the Stage at which capacity is activated. During enrollment, each participant must select one of several compensation methodologies. The compensation methodology selection will be completed with the appropriate DOD agency, resulting in prices in contingency contracts between DOD and the participant.

Application for VISA Participation

New applicants may apply to participate by obtaining a VISA application package (Form MA–1020 (OMB Approval No. 2133–0532)) from the Director, Office of Sealift Support, at the address indicated below. Form MA–1020 includes instructions for completing and submitting the application, blank VISA Application forms and a request for information regarding the operations and U.S. citizenship of the applicant company. A copy of the VISA document as published in the **Federal Register** on March 24, 2010, will also be provided with the package. This information is needed in order to assist the Maritime Administration in making a determination of the applicant's eligibility. An applicant company must provide an affidavit that demonstrates that the company is qualified to document a vessel under 46 U.S.C. 12103, and that it owns, or bareboat charters and controls, oceangoing, militarily useful vessel(s) for purposes of committing assets to the VISA program.

New VISA applicants are required to submit their applications for the VISA program as described in this Notice no later than 30 days after the date of publication of this **Federal Register** notice. Applicants must provide the following:

- U.S. citizenship documentation;
- Copy of their Articles of Incorporation and/or By Laws;
- Copies of loadline documents from a recognized classification society to validate oceangoing vessel capability;
- U.S. Coast Guard Certificates of Documentation for all vessels in their fleet;
- Copy of Bareboat Charters, if applicable, valid through the period of enrollment, which state that the owner will not interfere with the charterer's obligation to commit chartered vessel(s) to the VISA program for the duration of the charter; and
- Copy of Time Charters, valid through the period of enrollment, for tug services to barge operators, if sufficient tug service is not owned or bareboat chartered by the VISA applicant. Barge operators must provide evidence to MARAD that tug service of sufficient horsepower will be available for all barges enrolled in the VISA program.

Approved VISA participants will be responsible for ensuring that information submitted with their application remains up to date beyond the approval process. Any changes to VISA commitments must be reported to the Maritime Administration and USTRANSCOM not later than seven days after the change. If charter agreements are due to expire, participants must provide the Maritime Administration with charters that extend the charter duration for another 12 months or longer.

Once the Maritime Administration has reviewed the application and determined VISA eligibility, the Maritime Administration will sign the VISA application document which completes the eligibility phase of the VISA enrollment process.

After VISA eligibility is approved by the Maritime Administration, approved applicants are required to execute a joint VISA Enrollment Contract (VEC) with DOD [USTRANSCOM and the Military Sealift Command (MSC)] which will specify the participant's Stage III commitment, and appropriate Stage I and/or II commitments for the period October 1, 2011 through September 30, 2012. Once the VEC is completed, the applicant completes the DOD contracting process by executing a Drytime Contingency Contract (DCC) with MSC and, if applicable, a VISA Contingency Contract (VCC) with USTRANSCOM (for Liner Operators). The Maritime Administration reserves the right to revalidate all eligibility requirements without notice.

For Additional Information and Applications Contact

Jerome D. Davis, Director, Office of Sealift Support, U.S. Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–0688; Fax (202) 366–5904. Other information about the VISA can be found on the Maritime Administration's Internet Web Page at *http://www.marad.dot.gov.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administration.

Dated: July 11, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–17845 Filed 7–14–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35525]

Patrick D. Broe and ST&E Holdings, Inc.—Acquisition of Control Exemption—Stockton Terminal & Eastern Railroad Company

Patrick D. Broe (Broe) and ST&E Holdings, Inc. (ST&E Holdings) (collectively, Applicants), both noncarriers, have filed a verified notice of exemption to acquire control of Stockton Terminal & Eastern Railroad Company (Stockton Terminal), a Class III rail carrier.

The transaction may be consummated on or after July 30, 2011 (the effective date of the exemption).

Broe directly controls ST&E Holdings and 2 other noncarrier holding companies: OmniTRAX, Inc. (OmniTRAX) and BNS Holding, Inc. (BNS). OmniTRAX currently controls the following 11 Class III railroads: (a) Chicago Rail Link, LLC, which operates in Illinois; (b) Georgia Woodlands Railroad, LLC, which operates in Georgia; (c) Great Western Railway of Colorado, LLC, which operates in Colorado; (d) Manufacturers' Junction Railway, LLC, which operates in Illinois; (e) Newburgh & South Shore Railroad Limited, which operates in Ohio; (f) Northern Ohio & Western Railway, LLC, which operates in Ohio; (g) Panhandle Northern Railroad, LLC, which operates in Texas; (h) Alliance Terminal Railroad, LLC, which operates in Texas; (i) Fulton County Railway, LLC, which operates in Georgia; (j) Alabama & Tennessee River Railway, LLC, which operates in Alabama; and (k) Kettle Falls International Railway, LLC, which operates in Washington. BNS indirectly controls the following 3 Class III railroads: (a) Nebraska, Kansas and Colorado Railway, which operates in Nebraska, Kansas, and Colorado; (b) Illinois Railway, Inc., which operates in Illinois; and (c) Georgia & Florida Railway, Inc., which operates in Georgia and Florida.

Stockton Terminal Company (Terminal Company), a noncarrier, currently controls Stockton Terminal & Eastern Railroad of Nevada, a noncarrier, which in turn controls Stockton Terminal. Through the proposed transaction, ST&E Holdings

will acquire all of Terminal Company's stock and, after the acquisition transaction is consummated, Terminal Company and Nevada Company will be merged into ST&E Holdings. As a result, Broe and ST&E Holdings will control Stockton Terminal.

Applicants represent that: (1) The rail lines to be acquired by ST&E Holdings do not connect with any other railroad in the corporate family;[1] (2) the transaction is not part of a series of anticipated transactions that would connect Stockton Terminal's rail lines with any other railroad in the OmniTRAX or BNS corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).[2]

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified 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 no later than July 22, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35525, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Ball Janik LLP, 655 Fifteenth Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 11, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–17853 Filed 7–14–11; 8:45 am]

BILLING CODE 4915–01–P

[1] Stockton Terminal's lines are located in California. None of the railroads controlled by OmniTRAX or BNS operates a rail line in California.

[2] A redacted Purchase Agreement was filed with the notice of exemption. The Applicants concurrently filed a motion for protective order pursuant to 49 CFR 1104.14(b) to allow the filing under seal of the unredacted Purchase Agreement. That motion will be addressed in a separate decision.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 11, 2011.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11010, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 15, 2011 to be assured of consideration.

United States Mint

OMB Number: 1525–0012.

Type of Review: Revision of a currently approved collection.

Title: Generic Clearance for Voluntary Surveys to Implement E.O. 12882.

Abstract: This generic clearance for an undefined number of customer satisfaction and opinion surveys or focus group interviews will allow the United States Mint to assess the acceptance of, potential demand for, and barriers to acceptance/increased demand for current and future products, and the needs and desires of customers for more efficient, economical services.

Affected Public: Individuals and Households, Businesses and Organizations.

Estimated Total Annual burden Hours: 37,809.

Bureau Clearance Officer: Yvonne Pollard, United States Mint, 799 9th Street, NW., 4th Floor, Washington, DC 20220; (202) 354–6784.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–17755 Filed 7–14–11; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–24 OTS Nos. 04246 and H4776]

Home Federal Savings and Loan Association, Ashland, KY; Approval of Conversion Application

Notice is hereby given that on July 11, 2011, the Office of Thrift Supervision approved the application of Home Federal Savings and Loan Association, Ashland, Kentucky, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (*phone number:* (202) 906–5922 or *e-mail: public.info@ots.treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Southeast Regional Office, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: July 11, 2011.

By the Office of Thrift Supervision.

Ira L. Mills,

Federal Register Liaison.

[FR Doc. 2011–17876 Filed 7–14–11; 8:45 am]

BILLING CODE 6720–01–P

FEDERAL REGISTER

Vol. 76 Friday,

No. 136 July 15, 2011

Part II

Department of Health and Human Services

45 CFR Parts 155 and 156

Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 155 and 156

[CMS–9989–P]

RIN 0938–AQ67

Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans

AGENCY: Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the new Affordable Insurance Exchanges (''Exchanges''), consistent with title I of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), referred to collectively as the Affordable Care Act. The Exchanges will provide competitive marketplaces for individuals and small employers to directly compare available private health insurance options on the basis of price, quality, and other factors. The Exchanges, which will become operational by January 1, 2014, will help enhance competition in the health insurance market, improve choice of affordable health insurance, and give small businesses the same purchasing clout as large businesses.

A detailed Preliminary Regulatory Impact Analysis associated with this proposed rule is available at *http://cciio.cms.gov* under ''Regulations and Guidance.'' A summary of the aforementioned analysis is included as part of this proposed rule.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. Eastern Standard Time (EST) on September 28, 2011.

ADDRESSES: In commenting, please refer to file code CMS–9989–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–9989–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–9989–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document. For information on viewing public comments, see the beginning of the ''**SUPPLEMENTARY INFORMATION**'' section.

FOR FURTHER INFORMATION CONTACT:

Laurie McWright at (301) 492–4372 for general information matters.

Alissa DeBoy at (301) 492–4428 for general information and matters related to part 155.

Michelle Strollo at (301) 492–4429 for matters related to enrollment.

Pete Nakahata at (202) 680–9049 for matters related to part 156.

SUPPLEMENTARY INFORMATION:

Abbreviations

Affordable Care Act—The Affordable Care Act of 2010 (which is the collective term for the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act (Pub. L. 111–152))

BHP Basic Health Program
CAHPS Consumer Assessment of Healthcare Providers and Systems
CHIP Children's Health Insurance Program
CMS Centers for Medicare & Medicaid Services
DOL U.S. Department of Labor
ERISA Employee Retirement Income Security Act (29 U.S.C. section 1001, et seq.)
FEHBP Federal Employees Health Benefits Program
HEDIS Healthcare Effectiveness Data and Information Set
HHS U.S. Department of Health and Human Services
HIPAA Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191)
HMO Health Maintenance Organization
IHS Indian Health Service
IRS Internal Revenue Service
NAIC National Association of Insurance Commissioners
NCQA National Committee for Quality Assurance
OMB Office of Management and Budget
OPM Office of Personnel Management
PBM Pharmacy Benefit Manager
PHS Act Public Health Service Act
PPO Preferred Provider Organization
QHP Qualified Health Plan
SHOP Small Business Health Options Program
SSA Social Security Administration
The Act Social Security Act
The Code Internal Revenue Code of 1986

Executive Summary: Starting in 2014, individuals and small businesses will be able to purchase private health insurance through State-based competitive marketplaces called Affordable Insurance Exchanges, or ''Exchanges.'' Exchanges will offer Americans competition, choice, and clout. Insurance companies will compete for business on a level playing field, driving down costs. Consumers will have a choice of health plans to fit their needs. And Exchanges will give individuals and small businesses the same purchasing clout as big businesses. The Departments of Health and Human Services, Labor, and the Treasury (the Departments) are working in close coordination to release guidance related to Exchanges in several phases. The first in this series was a Request for Comment relating to Exchanges, published in the **Federal Register** on August 3, 2010 (75 FR 45584). Second,

Initial Guidance to States on Exchanges was issued on November 18, 2010. Third, a proposed rule for the application, review, and reporting process for waivers for State innovation was published in the **Federal Register** on March 14, 2011 (76 FR 13553). Fourth, two proposed regulations, including this one, are published in this issue of the **Federal Register** to implement components of the Exchange and health insurance premium stabilization policies in the Affordable Care Act.

This proposed rule: (1) Sets forth the Federal requirements that States must meet if they elect to establish and operate an Exchange; (2) outlines minimum requirements that health insurance issuers must meet to participate in an Exchange and offer qualified health plans (QHPs); and (3) provides basic standards that employers must meet to participate in the Small Business Health Options Program (SHOP). The intent of this proposed rule is to afford States substantial discretion in the design and operation of an Exchange. Greater standardization is proposed where required by the statute or where there are compelling practical, efficiency or consumer protection reasons. This proposed rule does not address all of the Exchange provisions in the Affordable Care Act; additional guidance on the establishment and operation of Exchanges will be provided in forthcoming proposed rules.

Submitting Comments: We welcome comments from the public on all issues set forth in this proposed rule to assist us in fully considering issues and developing policies. Comments will be most useful if they are organized by the section of the proposed rule to which they apply. You can assist us by referencing the file code [CMS–9989–P] and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all electronic comments received before the close of the comment period on the following public Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at Room 445–G, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Monday through Friday of each week from 8:30 a.m. to 4 p.m. to schedule an appointment to view public comments, call 1–800–743–3951.

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I. Background

A. Legislative Overview

1. Legislative Requirements for Establishing Exchanges

Section 1311(b) and section 1321(b) of the Affordable Care Act provide that each State has the opportunity to establish an Exchange(s) that: (1) Facilitates the purchase of insurance coverage by qualified individuals through qualified health plans (QHPs); (2) assists qualified employers in the enrollment of their employees in QHPs; and (3) meets other requirements specified in the Affordable Care Act.

Section 1321 of the Affordable Care Act discusses State flexibility in the operation and enforcement of Exchanges and related requirements. In this proposed rule, we aim to encourage State flexibility within the boundaries of the law. Each State electing to establish an Exchange must adopt the Federal standards contained in this law and in this proposed rule, or have in effect a State law or regulation that implements these Federal standards. Section 1311(k) further specifies that Exchanges may not establish rules that conflict with or prevent the application of regulations promulgated by the Secretary. Section 1311(d) describes the minimum functions of an Exchange, including the certification of QHPs.

Section 1321(c)(1) requires the Secretary to establish and operate such Exchange within States that either: (1) Do not elect to establish an Exchange, or (2) as determined by the Secretary on or before January 1, 2013, will not have an Exchange operable by January 1, 2014. Section 1321(a) also provides broad authority for the Secretary to establish standards and regulations to implement the statutory requirements related to Exchanges, QHPs, and other components of title I of the Affordable Care Act.

Unless otherwise specified, the provisions in this proposed rule related to the establishment of minimum functions of an Exchange are based on the general authority of the Secretary under section 1321(a)(1) of the Affordable Care Act. Section 1321(a)(2) requires the Secretary to engage in consultation to ensure balanced representation among interested parties. We describe the consultation activities the Secretary has undertaken later in this introduction.

2. Legislative Requirements for Related Provisions

Subtitle K of title II of the Affordable Care Act, Protections for American Indians and Alaska Natives, section 2901, extends special benefits and protections to Indians including limits on cost sharing and payer of last resort requirements for health programs operated by the Indian Health Service (IHS), Indian tribes, tribal organizations, and urban Indian organizations. We propose some provisions under this authority in subpart C of part 156, and we expect to address others in future rulemaking.

Section 6005 of the Affordable Care Act creates new section 1150A of the Act, which requires QHP issuers, and sponsors of certain plans offered under part D or title XVIII of the Act, to provide data on the cost and distribution of prescription drugs covered by the plan. We propose to

codify these requirements under this authority in part 156, subpart C.

B. Stakeholder Consultation and Input

On August 3, 2010, HHS published a Request for Comment (the RFC) inviting the public to provide input regarding the rules that will govern the Exchanges. In particular, HHS asked States, tribal representatives, consumer advocates, employers, insurers, and other interested stakeholders to comment on the types of standards Exchanges should be required to meet. The comment period closed on October 4, 2010. This proposed rule does not directly respond to comments from the RFC; however, the comments received are described at the beginning of each subpart and referred to, where applicable, when discussing specific regulatory proposals.

The public response to the RFC yielded comment submissions from consumer advocacy organizations, medical and health care professional trade associations and societies, medical and health care professional entities, health insurers, insurance trade associations, members of the general public, and employer organizations. The majority of the comments were related to the general functions and requirements for Exchanges, QHPs, eligibility and enrollment, and coordination with Medicaid. We intend to respond to comments from the RFC, along with comments received on this proposed rule, as part of the final rule.

In addition to the RFC, HHS has consulted with stakeholders through weekly meetings with the National Association of Insurance Commissioners (NAIC), regular contact with States through the Exchange grant process, and meetings with tribal representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties. This consultation will continue throughout the development of Exchange guidance.

C. Structure of the Proposed Rule

The regulations outlined in this notice of proposed rulemaking will be codified in the new 45 CFR parts 155 and 156. Part 155 outlines the proposed standards for States relative to the establishment of Exchanges and outlines the proposed standards required of Exchanges related to minimum Exchange functions. Part 156 outlines the proposed standards for health insurance issuers with respect to participation in an Exchange, including the minimum certification requirements for QHPs. Many provisions in part 155 have parallel requirements under part 156 because the Affordable Care Act creates complementary responsibilities for Exchanges and QHP issuers. Where possible, there are cross-references between parts 155 and 156 to avoid redundancy.

Subjects included in the Affordable Care Act to be addressed in separate rulemaking include but are not limited to: (1) Standards for individual eligibility for participation in the Exchange, advance payments of the premium tax credit, cost-sharing reductions, and related health programs and appeals of eligibility determinations; (2) standards outlining the Exchange process for issuing certificates of exemption from the individual responsibility requirement and payment under section 1411(a)(4); (3) defining essential health benefits, actuarial value and other benefit design standards; and (4) standards for Exchanges and QHP issuers related to quality.

We note that the health plan standards set forth under this proposed rule are, for the most part, strictly related to QHPs offered through the Exchange and not the entire individual and small group market. Various sections added to the Public Health Service (PHS) Act, and incorporated by reference into ERISA and the Code, by the Affordable Care Act extend some of the requirements in this proposed rule to the non-QHP market. Such requirements for the entire individual and small and large group markets already have been, and will continue to be, addressed in separate rulemaking issued by HHS, and the Departments of Labor and the Treasury.

II. Provisions of the Proposed Regulation

A. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

1. Subpart A—General Provisions

a. Basis and Scope (§ 155.10)

Section 155.10 of subpart A specifies the general statutory authority for and scope of standards proposed in part 155 that establish minimum requirements for the State option to establish an Exchange, minimum Exchange functions, enrollment periods, minimum SHOP functions, and certification of QHPs. In general, this NPRM is based on the broad rulemaking authority of 1321(a)(1) as well as other specific statutory provisions identified in the preamble where appropriate.

b. Definitions (§ 155.20)

Under § 155.20, we set forth definitions for terms that are used throughout part 155. For the most part, the definitions presented in § 155.20 are taken directly from the Affordable Care Act or from existing regulations, unless otherwise specified. Some new definitions were created for the purposes of carrying out regulations proposed in part 155. When a term is defined in part 155 other than in subpart A, the definition of the term is applicable only to the relevant subpart or section. The application of the terms defined in this section is limited to this proposed rule.

Several terms are defined by the Affordable Care Act, including ''individual market'' (section 1304(a)(2)), ''small group market'' (section 1304(b)(2)), ''qualified employer'' (section 1312(f)(2)), ''qualified individual'' (section 1312(f)(1)), ''qualified health plan'' (section 1301(a)(1)), ''cost sharing'' (section 1302(c)(3)), ''Navigator'' (section 1311(i)), ''plain language'' (section 1311(e)(3)(B)), ''health plan'' (section 1301(b)(1)), ''eligible employer-sponsored plan'' and ''minimum essential coverage'' (section 5000A(f)(1) of the Code, as added by section 1501(f)), ''large employer'' and ''small employer'' (section 1304(b)), and ''State'' (section 1304(d)). The term ''Code'' refers to the Internal Revenue Code of 1986.

The definition for an ''Exchange'' in § 155.20 is drawn from the statutory text in section 1311(d)(1) and 1311(d)(2)(A). We interpret section 1321(c) of the Affordable Care Act to mean that this definition includes an Exchange established or operated by the Federal government if a State does not establish an Exchange. Also, pursuant to section 1311(b)(1)(B), we interpret the term ''Exchange'' to be inclusive of the operation of a SHOP, which we define based on that section as well.

Some definitions were taken from other interim final regulations issued previously pursuant to the Affordable Care Act, including the term ''lawfully present'' from § 152.2 of this chapter and the term ''grandfathered plan'' from § 147.140 of this chapter. The definitions for the terms ''group health plan,'' ''health insurance issuer,'' and ''health insurance coverage'' are cross-referenced to the definitions established in § 144.103. The definition for the term ''employee'' is taken from the PHS Act, which refers to section 3(6) of ERISA. Under ERISA, the term employee means any individual employed by an employer. The definition of ''employer'' is taken as well from the PHS Act, which refers to section 3(5) of ERISA. We note that coverage for only a sole proprietor, certain owners of S corporations, and certain relatives of

each of the above would not constitute a group health plan under ERISA section 732(a) (29 U.S.C. section 1191a(a)) and would not be entitled to purchase in the small group market under Federal law.

We create several definitions regarding eligibility and enrollment for the purpose of this proposed rule, including ''advance payments of the premium tax credit,'' ''annual open enrollment period,'' ''applicant,'' ''cost-sharing reductions,'' ''initial enrollment period,'' and ''special enrollment period.'' Several other definitions used throughout this proposed rule are established for various purposes, including the terms: ''agent or broker,'' ''benefit year,'' ''enrollee,'' ''plan year,'' and ''Exchange service area.''

In the following paragraphs, we discuss the proposed definitions where more clarity is warranted. We note that we interpret the term ''cost sharing'' as defined in section 1302(c)(3) of the Affordable Care Act to apply to payments for deductibles, copayments, coinsurance or similar charges related to the essential health benefits only. This is consistent with the definition of actuarial value in section 1302(d)(2) of the Affordable Care Act, which specifies that actuarial value shall apply only to the essential health benefits; section 1402(c)(4), which applies cost-sharing reductions only to essential health benefits; and section 1302(c)(3)(ii), which applies any other payments only to essential health benefits.

The term ''qualified employer'' is defined in section 1312(f)(2) of the Affordable Care Act as a small employer that elects to make, at a minimum, all full-time employees eligible for coverage in a qualified health plan. While the definition indicates that a qualified employer is a ''small employer,'' the Affordable Care Act provides that, beginning in 2017, States will have the option to allow issuers to offer QHPs in the large group market through the SHOP. The Affordable Care Act also defines a small employer, for the purposes of health coverage, as an employer with at least one but not more than 100 employees. Pursuant to 1304(b)(3), each State has the option to limit small employers to having no more than 50 employees until 2016. We clarify that the scope of the term qualified employer is expected to vary among States and over time. The term ''qualified employee'' refers to employees offered coverage through a SHOP by a qualified employer.

We propose several terms to define an individual's participation in an Exchange at different periods in the process for individuals, employers, or employees. The terms are ''applicant,'' ''qualified individual/qualified employer/qualified employee,'' and ''enrollee.'' An applicant is an individual who is seeking an eligibility determination to enroll in a QHP in the Exchange, to receive advance payments of the premium tax credit or cost-sharing reductions, or to receive benefits through other State health programs. In the context of a SHOP, the term applicant indicates an employer or employee. The term ''qualified individual'' is based on section 1312(f)(1) of the Affordable Care Act. Although the Affordable Care Act does not specifically indicate in section 1312(f)(1) that a qualified individual is one who has been determined eligible to participate in an Exchange, we have interpreted it and propose to use the term to mean that the individual has been determined eligible based on the context in which the term is used in other provisions. For example, section 1312(d)(3)(C) states that ''a qualified individual may enroll in any qualified health plan'' and section 1311(d)(2) states that ''an Exchange shall make available qualified health plans to qualified individuals and qualified employers.'' These provisions suggest that a qualified individual is one who is already determined eligible to participate in an Exchange. Similarly, ''qualified employee'' and ''qualified employer'' are terms to indicate an employee or employer that has been determined eligible to participate in a SHOP.

We propose to use the term ''enrollee'' to describe a qualified individual or qualified employee who has enrolled in a QHP. Although not a defined term, we use the word ''consumer'' throughout discussion in this NPRM. We generally use the term to mean qualified individuals, qualified employers, or qualified employees, as indicated by the context. In some places, the term may be used to generally describe any potential purchaser of health coverage.

For the purposes of this proposed rule, any reference to the term ''issuer,'' meaning a health insurance issuer, qualified health plan issuer, or QHP issuer, is used in making reference to requirements on or actions taken by the entity that offers health plans. A ''health plan,'' ''qualified health plan,'' or ''QHP'' is defined as a discrete combination of benefits and cost-sharing that is offered by a health insurance issuer and in which an individual or group can enroll.

We propose to define ''health plan'' in accordance with section 1301(b)(1) of the Affordable Care Act to encompass health insurance coverage and a group health plan. The Affordable Care Act specifies that, except to the extent specified, the term ''health plan'' shall not include a group health plan or multiple employer welfare arrangement (MEWA) to the extent the plan or arrangement is not subject to State insurance regulation under section 514 of ERISA. However, we recognize that section 514 of ERISA allows State regulations of MEWAs, provided that such regulation does not conflict with standards of ERISA. We request comment on how to reconcile this inconsistency. We have also received questions about whether Taft-Hartley plans and church plans can participate in the Exchange. We request comment on how such plans could potentially provide coverage opportunities through the Exchange.

We recognize that the term health plan is sometimes used colloquially in a way that is interchangeable with health insurance issuer, but for the sake of clarity we refer to the entity offering coverage as the issuer and the coverage being purchased as the health plan within this proposed rule.

For the purposes of this proposed rule, the term ''qualified health plan'' denotes a health plan that is certified to be offered through an Exchange as a QHP, while a ''qualified health plan issuer'' is an issuer that is subject to requirements in this proposed rule related to the offering of QHPs through the Exchange. We note that ''QHP issuer'' and ''health insurance issuer'' generally refer to the same entity, but the former is used to describe a health insurance issuer that is offering a QHP through an Exchange, and therefore, must meet the requirements set forth in this NPRM related to such offerings. As a general theme, we use the word ''qualified'' to denote an individual or an entity eligible to participate, where applicable, in an Exchange or a product eligible to be offered through the Exchange. In this proposed rule, ''qualified health plan'' only refers to those QHPs that are certified by and offered through an Exchange; however, a QHP issuer is not precluded from offering the certified QHP outside of an Exchange.

We include two separate terms related to defining the time an individual or family is covered by health insurance: ''Benefit year'' and ''plan year.'' Benefit year refers to coverage that begins on January 1 and lasts for the duration of a calendar year. This is typically used to refer to coverage in the individual market. ''Plan year'' is used to refer to any rolling consecutive 12-month period of coverage. This is typically used when referring to coverage through

the small group market, which becomes effective on a rolling basis depending on when the small employer first offers or purchases the health plan.

The terms ''eligible employer-sponsored plan'' and ''minimum essential coverage'' have the meaning provided in statute and applicable regulations. In accordance with section 36B(c)(2)(B) of the Code, as added by section 1401(a) of the Affordable Care Act, an individual is ineligible for advance payments of the premium tax credit if he or she is eligible for ''minimum essential coverage'' (other than coverage in the individual market), which includes coverage through an ''eligible employer-sponsored plan.'' However, section 36B(c)(2)(C) of the Code specifies exceptions under which an individual who is eligible for an ''eligible employer-sponsored plan'' is eligible for advance payments of the premium tax credit; specifically, if such coverage is unaffordable or does not meet a minimum value requirement.

2. Subpart B—General Standards Related to the Establishment of an Exchange by a State

The Affordable Care Act sets forth general standards related to the establishment of a State Exchange and provides a number of areas where States that choose to operate an Exchange may exercise discretion in making decisions about Exchange operations. Under the statute, States have choices regarding the structure and governance of their Exchanges. For example, a State may establish an Exchange as a State agency or as a non-profit organization, and may choose to contract with other eligible entities to carry out various functions of the Exchange. A State may also choose to partner with other States to form a regional Exchange, or may establish one or more subsidiary Exchanges within the State. This subpart sets forth approval standards for State Exchanges as well as the process by which HHS will determine whether a State Exchange meets those standards.

HHS has pursued various forms of collaboration with the States to facilitate, streamline and simplify the establishment of an Exchange in every State. These efforts have made it clear that for a variety of reasons including reducing redundancy, promoting efficiency, and addressing the tight implementation timelines authorized under the Affordable Care Act, States may find it advantageous to draw on a combination of their own work plus business services developed by other States and the Federal government as they move toward certification. Some States have expressed a preference for a flexible State partnership model combining State-designed and operated business functions with Federally-designed and operated business functions. Examples of such shared business functions might include eligibility and enrollment, financial management, and health plan management systems and services. We note that States have the option to operate an exclusively State-based Exchange. HHS is exploring different partnership models that would meet the needs of States and Exchanges.

In response to the RFC, we received numerous comments related to the establishment of State Exchanges. In general, the comments focused on how to balance the need for State flexibility against the need for consistency. We also received numerous comments related to the governance structure of the Exchanges and the establishment of regional or subsidiary Exchanges. We considered these comments as we developed the proposed rule.

a. Establishment of a State Exchange (§ 155.100)

Sections 1311(b) and 1321(b) of the Affordable Care Act provide each State with the option to elect to establish an Exchange for the individual and small group markets. We propose to codify this option in paragraph (a).

In paragraph (b), we propose to codify section 1311(d)(1) of the Affordable Care Act that an Exchange must be a governmental agency or non-profit entity established by the State. We also propose that the governance structure of the Exchange must be established and operated consistent with the requirements in § 155.110. A governmental agency could be an existing State executive branch agency or an independent public agency. When reviewing the types of governmental agencies that could serve as an Exchange, States should consider the costs and benefits of utilizing the accountability structure within an existing agency versus the need to establish a governing body for an independent public agency. Additionally, each State will need to follow its own laws related to the establishment of non-profit organizations. A State could operate an Exchange through an existing non-profit that was established by a State, or by establishing a new non-profit organization or corporation. Under any scenario, the management structure of the Exchange must be accountable for Exchange oversight and performance.

While a number of commenters on the RFC expressed concern over the operation of Exchanges by non-profit entities, we do not propose to limit the States' discretion to choose this type of entity beyond the minimum standards proposed in § 155.110. However, we note that States should consider the relative merits of operating an Exchange through a non-profit entity. Non-profit entities may be able to operate without some of the restrictions that can limit the flexibility of governmental agencies; however, non-profit entities may face limitations performing functions that are typically governmental in nature. In light of these concerns, we note suggestions by some commenters that States consider establishing independent public/governmental agencies with flexible hiring and operational practices or establishing non-profit entities with governing bodies that are appointed and overseen by States.

b. Approval of a State Exchange (§ 155.105)

In paragraph (a) of proposed § 155.105, we propose to codify section 1321(c)(1)(B) of the Affordable Care Act that directs the Secretary to determine by January 1, 2013 whether a State's Exchange will be fully operational by January 1, 2014. We believe that ''fully operational'' means that an Exchange is capable of beginning operations by October 1, 2013 to support the initial open enrollment period proposed in § 155.410. HHS will make this determination through applying the State Exchange approval standards and process established in this section.

In paragraph (b), we outline the standards upon which HHS will approve a State Exchange. First, an Exchange must be established consistent with this subpart and be capable of carrying out the required functions of an Exchange consistent with the subparts contained within this part, including: subpart C related to minimum Exchange functions; subpart E related to enrollment; subpart H related to the operation of a SHOP; and subpart K related to certification of QHPs. Second, an Exchange must be able to comply with the information requirements established pursuant to section 36B of the Code with respect to advance payments of the premium tax credit and in accordance with future rulemaking. Third, a State seeking approval of an Exchange must agree to perform its responsibilities related to the operation of a reinsurance program, set forth in the proposed rule, the Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment published in this issue of the Federal Register. According to section 1341 of the Affordable Care Act, each State must

include in the standards it adopts under section 1321(b) related to the election to operate a State Exchange the Federal requirements for State reinsurance programs, and must also establish or enter into a contract with one or more applicable reinsurance entities to carry out the reinsurance program.

Finally, the entire geographic area of a State must be covered by one or more Exchanges. A State could meet this requirement by having a combination of a regional Exchange and one or more subsidiary Exchanges although to minimize consumer confusion, only one Exchange may operate in each geographically distinct area. To the extent that more than one Exchange is established in a State, we encourage each Exchange to ensure that consumers understand which Exchange they should utilize to access health insurance coverage.

In paragraph (c), we outline the process through which HHS will approve a State Exchange. In paragraph (c)(1), we propose that to initiate the State Exchange approval process, a State must elect to establish an Exchange by submitting an Exchange Plan to HHS, which constitutes the State's application for approval of its Exchange. The Exchange Plan will be submitted through a procedure to be described in additional guidance. As part of the Exchange Plan, the State will be asked to provide detailed information on how it will meet each of the standards described in paragraph (b) of this section. We expect that the Exchange Plan will include copies of any agreements into which the Exchange has entered to carry out one or more of the Exchange's responsibilities in accordance with § 155.110, as well as additional supporting documentation. We plan to issue a template outlining the required components of the Exchange Plan, subject to the notice and comment process under the Paperwork Reduction Act. States are encouraged to leverage the implementation plans that are required as part of reporting on State Exchange grant awards when preparing to submit an Exchange Plan.

In paragraph (c)(2), we propose that each State applying for approval of its Exchange be subject to an assessment to be carried out by HHS to evaluate a State's operational readiness to execute its Exchange Plan. HHS will coordinate the readiness assessment process with the grants monitoring process under the State planning and establishment grants. This process may include meetings with State and Exchange officials as well as conference calls and on-site visits. HHS will issue additional guidance on the structure for and schedule of these assessments.

In paragraph (d), we propose that each State must receive written approval or conditional approval of its Exchange Plan in order to be approved to operate. If approved, the Exchange Plan will constitute an agreement between HHS and the Exchange to adhere to the contents of the Exchange Plan. We also note that, although the statute requires HHS to approve State Exchanges no later than January 1, 2013, there will be systems development and contracting activities that continue to occur in 2013 after the statutory deadline for approval. In order to accommodate States that are making progress towards the operational date of January 1, 2014, HHS may issue a conditional approval. The conditional approval would presume that the State's Exchange would be operational by January 1, 2014 even if it cannot demonstrate complete readiness on January 1, 2013. HHS would continue to work with and monitor the progress of States with conditional approval until a determination of full approval is made, or until the conditional approval is revoked.

We also note that we are considering establishment of a review process for the Exchange Plan that is similar to Medicaid and CHIP for which there would be 90 days to review the plan for either approval or denial, or to request comment. If additional information is requested and received from the State, HHS would have 90 days to either approve or disapprove the plan. We seek comments on the appropriateness of this process and timeline.

In paragraph (e), we propose that a State must notify HHS before significant changes are made to the Exchange Plan and that an Exchange must receive written approval of significant changes from HHS before they may be effective. We are considering utilizing the State Plan Amendment process in place for Medicaid and CHIP. We seek comment on this approach. By establishing an ongoing dialogue with each State, HHS will be able to provide technical assistance and support to ensure that each Exchange is operating in compliance with Federal requirements. Significant changes could include altering a key function of the Exchange operations, changing a crucial timeframe for certain functions, or other changes to the Exchange Plan that would have an impact on the operation of the Exchange. While not exhaustive, changes within this scope could also include changes to: (1) Exchange governance structure, (2) State laws or regulations, (3) IT systems or functionality, (4) the QHP certification process, and (5) the process for enrollment into a QHP. We expect to issue further guidance on this process.

In paragraph (f), we propose to codify the statutory requirement in section 1321(c)(1) of the Affordable Care Act that if a State elects not to establish an Exchange, or if the State's Exchange is not approved, HHS, either directly or through agreement with a non-profit entity, must establish and operate an Exchange in that State. We also identify the standards in this proposed regulation that would apply to a Federally-facilitated Exchange, which generally include all requirements of this part except for Exchange approval requirements and other specific State Exchange requirements.

c. Election To Operate an Exchange After 2014 (§ 155.106)

In paragraph (a), we propose an approval process for a State that does not have in place an approved or conditionally approved Exchange Plan and operational readiness assessment by January 1, 2013. We propose to allow States the flexibility of seeking approval to operate an Exchange even if a State is not approved to operate by January 1, 2013. We propose in paragraph (a)(1) that a State electing to seek initial approval of its Exchange after January 1, 2013 must comply with the standards and process set forth in § 155.105. We propose in paragraph (a)(2) that a State electing to operate an Exchange after 2014 must have in effect an approved or conditionally approved Exchange Plan at least 12 months prior to the first effective date of coverage. We assume that the first effective date of coverage will fall on January 1 of any given year because of the standardized annual open enrollment periods, so the approval or conditional approval would have to be in effect by January 1 of the prior year; these dates would align future Exchange Plan approvals with the initial approval timeline set forth in statute. We note that we expect that an Exchange would have an open enrollment period prior to the first effective date of coverage.

In paragraph (a)(3), we propose that such a State must work with HHS to develop a plan to transition from a Federally-facilitated Exchange to a State Exchange. We anticipate that this would include the smooth transition of operational functions from the Federally-facilitated Exchange to the State Exchange, including transitioning enrollees from QHPs certified by the Federally-facilitated Exchange to QHPs certified by a State Exchange, which may or may not differ.

In paragraph (b), we propose a process to allow a State-operated Exchange to cease its operations after January 1, 2014 and to elect to have the Federal government establish and operate an Exchange within the State. If a State determines that it will no longer operate an Exchange after January 1, 2014, we propose in paragraph (b)(1) that the State must notify HHS of this determination 12 months prior to ceasing its operations. Also, we propose in paragraph (b)(2) that the Exchange must collaborate with HHS on the development and execution of a transition plan and process to facilitate operation of a Federally-facilitated Exchange. We estimate that we will need 12 months to establish a Federally-facilitated Exchange in a State due to the time required to set up the necessary information technology and QHP certification process.

d. Entities Eligible To Carry Out Exchange Functions (§ 155.110)

Section 1311(f)(3) of the Affordable Care Act provides an Exchange with the authority to contract with eligible entities to carry out one or more of the responsibilities of an Exchange, which we propose to codify in paragraph (a) of § 155.110. The minimum requirements set forth in the statute, and which are proposed in paragraph (a), specify that an eligible entity is one that: (1) Is incorporated under and subject to the laws of one or more States, (2) has demonstrated experience on a State or regional basis in the individual and small group markets and in benefits coverage, and (3) is not a health insurance issuer or treated as a health insurance issuer. An eligible entity also includes the State Medicaid agency. We also interpret this language as allowing an Exchange to contract with the State Medicaid agency through which the State Medicaid agency determines eligibility on behalf of the Exchange. This authority is also provided in section 1413(d)(2) of the Affordable Care Act. We note that there may be ways in which an Exchange and the Federal government can work in partnership to carry out certain activities. Underlying this NPRM and the cooperative agreement funding opportunities provided to States is a philosophy of Federal and State partnership. As States, and the Federal government in connection with the Federally-facilitated Exchange, develop expertise and implement the infrastructure for Exchange operations, we anticipate sharing of information and ideas. We welcome comment on how to implement or construct a partnership model consistent with sections 1311(f)(3) and 1311(d)(5) of the Affordable Care Act.

In paragraph (b), to the extent that the Exchange establishes contracting arrangements with outside entities, we propose that the Exchange remains responsible for meeting all Federal requirements related to contracted functions. Pursuant to these provisions, States have flexibility to determine appropriate contracting entities within legal limits. We invite comment on the extent to which we should place conflict of interest requirements on contracted entities.

In paragraph (c), we propose that if the Exchange is an independent State agency or not-for-profit entity established by the State and not an existing State agency, it must have a clearly defined governing board that meets certain minimum requirements outlined in paragraphs (c)(1) through (4). Further, the Exchange must submit detailed information on its accountability structure in its Exchange Plan, as described in § 155.105(c).

In paragraph (c)(1), we propose that the Exchange accountability structure be administered under a formal, publicly-adopted operating charter or by-laws. This provision ensures transparency of the governing board structure for the public. In paragraph (c)(2), we propose that the Exchange board must hold regular public meetings for which the public is provided advance notice to provide them with opportunities to observe and comment on Exchange policies and procedures.

In paragraphs (c)(3) and (c)(4), we propose standards on the membership of an Exchange governing board related to conflicts of interest and management qualifications. Exchanges are intended to support consumers, including small businesses, and as such, the majority of the voting members of governing boards should be individuals who represent their interests. We propose in paragraph (c)(3) that the voting members of an Exchange governing board represent consumer interests by ensuring that membership may not consist of a majority of representatives of health insurance issuers, agents, or brokers, or any other individual licensed to sell health insurance. We invite comment on the extent to which these categories of representatives with potential conflicts of interest should be further specified and on the types of representatives who have potential conflicts of interest. We propose these categories as a minimum Federal standard. A State may wish to adopt more stringent or specialized conflict of interest requirements than those used in connection with regular governmental operations.

In paragraph (c)(4), we propose that the Exchange governing body ensure that a majority of members have relevant experience in health benefits administration, health care finance, health plan purchasing, health care delivery system administration, public health, or health policy issues related to the small group and individual markets and the uninsured. We invite comment on the types of representatives that should be on Exchange governing boards to ensure that consumer interests are well-represented and that the Exchange board as a whole has the necessary technical expertise to ensure successful operations.

We considered additional options for regulating Exchange governance structures beyond the minimal requirements proposed herein. However, we propose to afford States discretion to select and appoint members of their Exchange boards. As such, a State may choose to include additional membership as long as composition of the board still meets the minimum Federal requirements.

In paragraph (d), we propose two requirements related to governance principles of an Exchange. First, in paragraph (d)(1), we propose that each Exchange publish a set of guiding governance principles that includes ethical and conflict of interest standards and disclosure of financial interests that are posted for public consumption. In paragraph (d)(2), we propose to require that an Exchange have in place procedures for disclosure of financial interest by members of the governing body or governance structure of the Exchange. We invite comment on this proposal and whether additional detail should be proposed. We note that we received numerous comments in response to the RFC on Exchange governance. Some commenters suggested that we establish minimum standards because of the limited statutory requirements in this area. In contrast, other commenters suggested that HHS establish more restrictive standards, citing concerns over conflicts of interest and non-governmental entities carrying out activities that are inherently governmental.

In paragraph (e), we acknowledge a State's option to elect to establish a separate governance and administrative structure for the SHOP. Section 1311(b)(2) of the Affordable Care Act provides each State with flexibility to merge its individual market Exchange and SHOP under a single administrative or governance structure. We interpret this provision to also allow a State to operate these functions under separate governance or administrative structures.

However, we believe that a single governance structure for both the individual market Exchange functions and SHOP will yield better policy coordination, increased operational efficiencies, and improved operational coordination. In paragraph (e)(1), we propose to allow a State to operate its individual market Exchange and SHOP under separate governance or administrative structures and also require that if it chooses to do so, it must, where applicable, coordinate and share relevant information between the two Exchange bodies. Then, we propose in paragraph (e)(2) to codify the requirement in section 1311(b)(2) of the Affordable Care Act that if a State does choose to operate its individual market Exchange and SHOP under a single governance or administrative structure, it must ensure that the Exchange has adequate resources to assist individuals and small employers.

Finally, in paragraph (f), we propose that HHS may periodically review the accountability structure and governance principles of an Exchange. We request comment on recommended frequency of these reviews.

e. Non-Interference With Federal Law and Non-Discrimination Standards (§ 155.120)

Section 1311(k) of the Affordable Care Act requires that an Exchange may not establish rules that conflict with or prevent the application of Exchange regulations promulgated by HHS, which we propose to codify in paragraph (a).

Section 1321(d) of the Affordable Care Act establishes that nothing in title I may be construed to preempt any State law that does not prevent the application of the provisions set forth under title I of the Affordable Care Act, which we propose to codify and extend to this proposed rule in paragraph (b).

In paragraph (c), we propose that a State must comply with any applicable non-discrimination statutes. Specifically, pursuant to the authority provided in 1321(a)(1)(A) to regulate the establishment and operation of an Exchange, we propose that an Exchange and a State, when fulfilling or carrying out the requirements of this part, must not operate an Exchange in such a way as to discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation. Examples of actions to which this standard applies include marketing, outreach, and enrollment.

f. Stakeholder Consultation (§ 155.130)

According to section 1311(d)(6) of the Affordable Care Act, Exchanges are required to consult with certain groups of stakeholders as they establish their programs and throughout ongoing operations. We propose that the Exchange consult on an ongoing basis with key stakeholders, including:

a. Educated health care consumers who are enrollees in QHPs; ''educated'' is the term used in Section 1311(d)(6)(A) of the Affordable Care Act to describe consumers who must be consulted. We recommend that Exchanges include in these consultations individuals with disabilities;

b. Individuals and entities with experience in facilitating enrollment in health coverage;

c. Advocates for enrolling hard-to-reach populations, which includes individuals with a mental health or substance abuse disorder. We also encourage Exchanges to include advocates for individuals with disabilities and those who need culturally and linguistically appropriate services;

d. Small businesses and self-employed individuals;

e. State Medicaid and CHIP agencies. We also encourage Exchanges to consult with consumers who are Medicaid or CHIP beneficiaries;

f. Federally-recognized tribe(s) as defined in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a, located within the Exchange's geographic area;

g. Public health experts;

h. Health care providers;

i. Large employers;

j. Health insurance issuers; and

k. Agents and brokers.

We note that the first five groups are identified in the Affordable Care Act under section 1311(d)(6). We proposed additional groups in response to numerous comments that we received to the RFC indicating that the views of such types of organizations and entities should be considered, which we propose in (f) through (k). We believe that the inclusion of these additional groups will provide diverse input and will be informative of the viewpoints of the various groups impacted by the Exchange.

Each Exchange that has one or more Federally-recognized tribes, as defined in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a, located within the Exchange's geographic area must engage in regular and meaningful consultation and collaboration with such tribes and their tribal officials on all Exchange policies that have tribal implications. We encourage Exchanges to also seek input from all tribal organizations and urban Indian organizations. While the Exchanges will be charged with the consultation, tribal consultation is a government-to-government process, and therefore the State should have a role in the process. We encourage States to develop a tribal consultation policy that is approved by the State, the Exchange, and tribe(s). We anticipate providing additional guidance to both the tribes and States on how the governments may collaborate and build a strong working relationship.

g. Establishment of a Regional Exchange or Subsidiary Exchange (§ 155.140)

Section 1311(f)(1) provides for the operation of an Exchange in more than one State if each State permits such operation and the Secretary approves such an Exchange. In paragraph (a) of § 155.140, we propose criteria that the Secretary will use to approve a regional Exchange. Although the statute uses the phrase ''regional or interstate Exchange,'' we use only the term ''regional Exchange'' to mean an Exchange that operates in two or more States for purposes of clarity. In paragraph (a)(1), we propose that a State may participate in a regional Exchange if the Exchange spans two or more States, noting that the States need not be contiguous. In paragraph (a)(2), we propose that a regional Exchange submit a single Exchange Plan for the regional Exchange and receive approval consistent with § 155.105 to demonstrate its readiness to operate an Exchange.

We encourage States to consider how a regional Exchange would meet the Exchange requirements and achieve the cooperation that must occur between the regional Exchange and each participating State's department of insurance. States should also consider how to provide a consistent level of consumer protections across the States, procedures by which a State would withdraw from a regional Exchange, and how each State would contribute to the financing of the regional Exchange.

Section 1311(f)(2) provides that a State may establish one or more subsidiary Exchanges, which we propose to codify in paragraph (b). In paragraph (b)(1), we propose to codify the statutory language in section 1311(f)(2)(A) that a State may establish one or more subsidiary Exchanges if each such Exchange serves a geographically distinct area. In paragraph (b)(2), we propose to codify the statutory requirement that the area served by a subsidiary Exchange must be at least as large as a rating area described in section 2701(a) of the PHS Act, and referenced in section 1311(f)(2)(B) of the Affordable Care Act.

We note that the Secretary will address the process for States requesting approval of rating areas in future rulemaking.

We invite comment on operational or policy concerns about the idea of subsidiary Exchanges that cover areas across State lines. We also request comment on the extent to which we should allow more flexibility in the structure of a subsidiary Exchange, for example, related to the combination of subsidiary Exchanges that would be allowed to operate in a State.

We note that several commenters suggested that we consider whether a tribal government could operate a regional or subsidiary Exchange or otherwise carry out some of the functions of an Exchange. Because an Exchange must be established by a State or by a Territory pursuant to sections 1311, 1321, and 1323 of the Affordable Care Act, or be operated by HHS consistent with 1321(c) of the Affordable Care Act, we do not believe that a tribal government itself could establish an Exchange. Instead, we believe that the tribal government could work with the State as the State establishes an Exchange.

In paragraph (c), we propose basic standards for a regional or subsidiary Exchange. First, in paragraph (c)(1), we propose that a regional or subsidiary Exchange must meet all requirements within this part. In paragraph (c)(2), we propose that a regional or subsidiary Exchange perform the functions of a SHOP consistent with subpart H of this part. If a regional or subsidiary Exchange chooses to operate a SHOP through separate governance than the individual market Exchange, we propose in paragraph (c)(2)(ii) that the geographic areas served must be the same. For example, if a State chooses to participate in a regional Exchange, it would need to do so for both the individual market and the small group market. We propose this standard as means to maximize administrative efficiency for the SHOP and to provide consistency for consumers. This consistency would also reduce the burden on entities such as QHPs that would otherwise operate in different service areas depending on whether they offer plans in the individual market or the small group market.

h. Transition Process for Existing State Health Insurance Exchanges (§ 155.150)

Some States have established operational health insurance exchanges that are currently providing access to health insurance coverage to certain individuals in their States. These State exchanges were established prior to passage of the Affordable Care Act and may not meet all the requirements set forth in the Affordable Care Act or this proposed rule. Section 1321(e) requires the establishment of a process for determining any areas in which the State may not be with Federal standards, which we propose in this section.

Consistent with section 1321(e)(1) of the Affordable Care Act, in paragraph (a), we propose that, unless determined to be non-compliant through the process below, a State operating an exchange is presumed to be in compliance with the standards set forth in this part if: (1) The exchange was operating before January 1, 2010; and (2) the State has insured a percentage of its population not less than the percentage of the population projected to be covered nationally after the implementation of the Affordable Care Act.

We are considering which data source to use to determine the applicable percentage of the national population projected to be insured after the implementation of the Affordable Care Act, which we propose to interpret to mean the year 2016. We consider 2016 to be the first full year after implementation of the Affordable Care Act in which health insurance coverage would achieve its steady state. We note that the CMS Office of the Actuary currently estimates that the coverage level of the U.S. population in 2016 will be 93.6 percent; the Congressional Budget Office estimates the coverage level at 95 percent.[1] We are considering the use of data from the CMS Office of the Actuary or the Congressional Budget Office to determine the applicable percentage. We invite comments on which proposed threshold should be used and on alternative numbers to be used.

In paragraph (b), we propose that any State that is currently operating a health insurance exchange that meets the description of such a State under paragraph (a) must work with HHS to identify areas of non-compliance with the requirements of this part.

i. Financial Support for Continued Operations (§ 155.160)

Section 1311(d)(5) of the Affordable Care Act provides that a State Exchange must be self-sustaining by January 1, 2015; the statute explicitly lists assessments and user fees on participating issuers as one potential means for a State to secure operational funding for Exchanges. In addition, section 1311(d)(5) places certain prohibitions on uses of the funds that are intended for Exchange administration and operations in order to prevent waste.

In paragraph (a), we incorporate the definition of ''participating issuer'' provided in § 156.50 to this section. In paragraph (b) of § 155.160, we propose to codify the statutory requirement that a State ensure its Exchange has sufficient funding to support ongoing operations beginning January 1, 2015. In addition, we propose that States must develop a plan for ensuring funds will be available. We note that the funding plan is a requirement of Exchange approval under subpart B of this part.

In paragraph (b)(1), we propose to codify the statutory flexibility in section 1311(d)(5)(A) of the Affordable Care Act that allows a State Exchange to fund its ongoing operations by charging user fees or assessments on participating issuers. In paragraph (b)(2), we propose that States may use other forms of funding for Exchange operations, consistent with the reference in section 1311(d)(5)(A) that allows States to ''otherwise generate funding.'' This language provides States with broad flexibility to generate funds beyond charging the ''assessments or user fees'' identified in the statute. States may use broad-based funding (which may include general State revenues, provider taxes, or other funding that spreads costs beyond imposing assessments or user fees on participating issuers), as long as the use of such funding does not violate other State or Federal laws.

In paragraph (b)(3), we propose to codify the implied statutory requirement established in section 1311(d)(5)(A) of the Affordable Care Act that a State Exchange must be self-sustaining starting on January 1, 2015. Federal funds may not be provided after that time to support its continued operations. This direction is also articulated in section 1311(a)(4)(B), which limits the duration of Federal grants to plan for and establish State Exchanges.

In paragraph (b)(4), we propose that the State Exchange announce the assessment of any user fees on health insurance issuers in advance of the plan year. We invite comment on whether the final regulation should otherwise limit how and when user fees may be charged, and whether such fees should be assessed on an annual basis.

[1] CMS Office of the Actuary, April 22, 2010: *https://www.cms.gov/ActuarialStudies/Downloads/PPACA_2010-04-22.pdf* (page 24); Congressional Budget Office, March 18, 2011: *http://www.cbo.gov/budget/factsheets/2011b/HealthInsuranceProvisions.pdf* (excluding unauthorized immigrants).

3. Subpart C—General Functions of an Exchange

Subpart C outlines the minimum functions of an Exchange, with cross-references in some cases to more detailed standards that are described in subsequent subparts (E, H and K). The proposed minimum functions are designed to provide State flexibility. Uniform standards are proposed where required by the statute or where there are compelling practical, efficiency or consumer protection reasons.

a. Functions of an Exchange (§ 155.200)

Proposed § 155.200 identifies the minimum functions of an Exchange. These functions closely parallel sections 1311(d)(2), (4), and (6), and sections 1402 and 1411–13 of the Affordable Care Act.

In paragraph (a), we propose a general standard that an Exchange must perform the required functions set forth in this subpart and in subparts E, H, and K of this part.

In paragraph (b), we propose, consistent with our interpretation of section 1311(d)(4)(H) and section 1411 of the Affordable Care Act, that an Exchange must grant certifications of exemptions from the individual responsibility requirement and payment. The specific standards and eligibility criteria that apply to such certifications will be addressed in future rulemaking.

In paragraph (c), we propose that the Exchange must perform eligibility determinations. We intend to provide specific standards and eligibility criteria for this Exchange function in future rulemaking to implement sections 1311, 1411, 1412, and 1413 of the Affordable Care Act. Further, it will support and complement rulemaking conducted by the Secretary of the Treasury with respect to section 36B of the Code, as added by section 1401(a) of the Affordable Care Act, and by the Secretary of HHS with respect to several sections of the Affordable Care Act that create new law and amend existing law regarding Medicaid and CHIP.

We note that the aforementioned sections of the Affordable Care Act create a central role for the Exchange in the process of determining an individual's eligibility for enrollment in a QHP, advance payments of the premium tax credit, cost-sharing reductions, Medicaid, CHIP and the BHP, if a BHP is operating in the Exchange service area. We interpret Affordable Care Act sections 1311(d)(4)(F), and 1413, and section 1943 of the Act, as added by section 2201 of the Affordable Care Act, to require the establishment of a system of streamlined and coordinated eligibility and enrollment through which an individual may apply for enrollment in a QHP, advance payments of the premium tax credit, cost-sharing reductions, Medicaid, and CHIP and receive a determination of eligibility for any such program. We also note that we interpret section 1413(b)(2) to mean that the eligibility and enrollment function should be consumer-oriented, minimizing administrative hurdles and unnecessary paperwork for applicants.

In paragraph (d), we propose that each Exchange establish a process for appeals of eligibility determinations. These requirements and the appeal process generally, including the requirements of section 1411(f) of the Affordable Care Act, will be addressed in future rulemaking.

In paragraph (e), we propose that an Exchange must perform required functions related to oversight and financial integrity requirements in order to comply with section 1313 of the Affordable Care Act.

In paragraph (f), we propose that the Exchange must evaluate quality improvement strategies and oversee implementation of enrollee satisfaction surveys, assessment and ratings of health care quality and outcomes, information disclosures, and data reporting pursuant to sections 1311(c)(1), 1311(c)(3), and 1311(c)(4) of the Affordable Care Act. We anticipate future rulemaking on these topics, but propose here the basic requirement that the Exchange will have a role in the implementation, oversight, and improvement of the quality and enrollee satisfaction initiatives required by the Affordable Care Act. This will include requirements for quality data collection, standards for assessing a QHP issuer's quality improvement strategies, and details on how Exchanges can assess and calculate ratings of health care quality and outcomes using methodologies made available by HHS or alternatives, if applicable.

The functions of an Exchange listed in proposed § 155.200 are important to the achievement of a more stable and accessible health insurance market for consumers and businesses and represent the minimum functions of an Exchange to meet that goal. We encourage States to consider supplemental standards or functionality for their Exchanges that benefit consumers and businesses, and we welcome comments regarding these and other functions that should be required of an Exchange.

b. Required Consumer Assistance Tools and Programs of an Exchange (§ 155.205)

In § 155.205, we outline the standards for a number of consumer assistance tools and activities that Exchanges must provide. In paragraph (a), we propose to codify section 1311(d)(4)(B) of the Affordable Care Act, which requires the Exchange to provide for the operation of a call center to respond to requests for assistance by consumers that is accessible via a toll-free telephone number.

We note that an Exchange has significant latitude in how it structures the call center. To increase accessibility to the call center, we suggest that an Exchange consider operating it outside of normal business hours and adjusting staffing levels in anticipation of periods of higher call volumes (for example, the weeks leading up to and during open enrollment). We also believe that the Exchange call center should have the capability to provide assistance to consumers and businesses on a broad range of issues, including but not limited to:

(1) The types of QHPs offered in the Exchange;

(2) The premiums, benefits, cost-sharing, and quality ratings associated with the QHPs offered;

(3) Categories of assistance available, including advance payments of the premium tax credit and cost-sharing reductions as well assistance available through Medicaid and CHIP;

(4) The application process for enrollment in coverage through the Exchange and other programs (for example, Medicaid and CHIP).

The Affordable Care Act includes several programs that aid consumers through the process of acquiring and using health insurance, including the State-based consumer assistance programs (for example, health insurance ombudsman programs created under Section 1002 of the Affordable Care Act) and the Navigator program, which we describe more fully in § 155.210 below. We encourage Exchanges to use call centers as a conduit to these and any other State consumer programs, where appropriate. We also recognize there may be some instances where there is appropriate overlap between information provided by the Exchange call centers and information provided by customer service call centers operated by health insurance issuers, particularly in the area of health plan enrollment. We seek comments on ways to streamline and prevent duplication of effort by the Exchange call center and QHP issuers' customer call centers, but

ensure that consumers have a variety of ways to learn about their coverage options and receive assistance on other health insurance coverage issues.

In paragraph (b), we propose to codify section 1311(d)(4)(C) of the Affordable Care Act, which requires an Exchange to maintain an Internet Web site. The Affordable Care Act provides two key provisions related to the establishment of an Exchange Web site. First, section 1103(b) of the Affordable Care Act requires the Secretary to establish a standardized format for presenting coverage option information, which is utilized to present comparative health plan information on the current HealthCare.gov Web site. Second, section 1311(c)(5) requires the Secretary to make available to all Exchanges a model Exchange Web site template developed by the Secretary. We are currently evaluating the extent to which the Exchange Web site may satisfy the need to provide plan comparison functionality using HealthCare.gov, and invite comments on this issue.

Generally, we envision the Exchange Web site to be an easy-to-use access point that serves as a primary source of information about available QHPs, Exchange activities, and other sources of health coverage. We believe that the Exchange Web site is an appropriate venue to post QHP information as required by other sections of the Affordable Care Act that require disclosure of information that would be helpful for consumers in comparing QHPs, including the medical loss ratio (section 2718 of the PHS Act), transparency in coverage data (section 1311(e)(3) of the Affordable Care Act), summary of benefits and coverage (section 2715 of the PHS Act) [2] and levels of coverage (section 1302(d) of the Affordable Care Act).

We specifically propose in § 155.205(b)(1) through (6) that an Exchange must maintain an up-to-date Internet Web site that:

1. Presents standardized comparative information on each available QHP. Such information must include:

i. Premium and cost-sharing information;

ii. The summary of benefits and coverage required by section 2715 of the PHS Act. Exchanges may consider making this information available through a link from their Web site to each QHP's Web site or Exchanges could require QHPs to submit this information in a manner that supports a searchable format;

iii. The level of coverage of a QHP (that is, bronze, silver, gold, platinum, or catastrophic coverage consistent with section 1302(d) and 1302(e) of the Affordable Care Act);

iv. The results of enrollee satisfaction surveys described in section 1311(c)(4) of the Affordable Care Act;

v. Quality ratings assigned to QHPs described in section 1311(c)(3) of the Affordable Care Act;

vi. The medical loss ratio as reported in accordance with interim final rule 75 FR 74921, December 1, 2010, amended 75 FR 82278, December 30, 2010;

vii. Transparency of coverage measures reported to the Exchange as required under § 155.1040; and

viii. The provider directory reported to the Exchange during certification pursuant to § 156.230;

2. Provides meaningful access to information for individuals with limited English proficiency. Such accessibility needs may be met by providing language assistance services, which may include translated information and ''tag lines'' directing individuals to translated materials and/or telephone numbers to call to reach interpreters for assistance. Web sites must also be accessible to people with disabilities in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act. HHS has issued guidance regarding the requirements of section 504 with respect to Web site accessibility.[3] The guidance states that at this time, the Department will consider a recipient's Web sites, interactive kiosks, and other information systems addressed by section 508 standards as being in compliance with section 504 if such technologies meet those standards. We encourage States to follow either the 508 guidelines or guidelines that provide greater accessibility to individuals with disabilities. States may wish to consult the latest section 508 guidelines issued by the U.S. Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0; [4]

3. Publishes the following financial information: the average cost of licensing required by the Exchange, any regulatory fees required by the Exchange, any other payments required by the Exchange, administrative costs of the Exchange, and monies lost to fraud, waste, and abuse in accordance with section 1311(d)(7) of the Affordable Care Act.

4. Provides contact information for Navigators and other consumer assistance services, including the telephone number of the Exchange call center;

5. Allows for an eligibility determination pursuant to the standards established in accordance with § 155.200(c) of this subpart; and

6. Allows for enrollment in coverage pursuant to subpart E of this part.

We are considering a Web site requirement that would allow applicants and enrollees to store and access their personal account information and make changes, provided that the Web site complied with the standards developed by the Secretary pursuant to section 3021(b)(3) of the PHS Act, as added by section 1561 of the Affordable Care Act. The standards [5] address electronic enrollment systems for Federal and State health and human services, provide for the submission and storage of electronic documents, and permit reuse of stored information. To minimize administrative burden, we would encourage Exchanges to develop a feature whereby eligibility and enrollment experts, caseworkers, Navigators, agents and brokers, and other application assisters are able to maintain records of individuals they have assisted with the application process. We request comment on this proposal.

In paragraph (c), we propose to codify section 1311(d)(4)(G) of the Affordable Care Act that requires an Exchange to establish an electronic calculator to assist individuals in comparing the costs of coverage in available QHPs after the application of any advance payments of the premium tax credit and cost-sharing reductions. We invite comment on the extent to which States would benefit from a model calculator and suggestions on its design.

In paragraph (d), we propose that the Exchange have a consumer assistance function (including but not limited to a Navigator program described more fully in § 155.210) that provides assistance services to consumers. Exchanges will receive various types of requests for assistance from consumers, including assistance with eligibility and enrollment, appeals, and handling complaints, and must be able to direct consumers accordingly. We note that if an Exchange receives complaints of

[2] The proposal here to post the summary of benefits and coverage (SBC) on the Exchange Web site is in addition to, and not in lieu of, any requirements regarding the manner, timing, and format for the delivery of an SBC to individuals under PHS Act section 2715. The Departments of HHS, Labor, and the Treasury are developing proposed regulations to be issued in the near future that are expected to address section 2715.

[3] *http://cciio.cms.gov/resources/files/joint_cms_ociio_guidance.pdf.*

[4] *http://www.access-board.gov/sec508/guide/index.htm.*

[5] Standards accessible at: *http://healthit.hhs.gov/portal/server.pt?open=512&mode=2&objID=3161.*

race, color national origin, disability, age, or sex discrimination, it may refer these individuals to the HHS Office for Civil Rights (OCR).

In paragraph (e), we propose that the Exchange conduct outreach and education activities to educate consumers about the Exchange and to encourage participation, separate from the implementation of a Navigator program described in § 155.210. Exchanges should aim to maximize enrollment of eligible individuals into QHPs to increase QHP participation and competition which in turn increases consumer choice and purchasing clout. This will also reduce the number of individuals without health insurance coverage. We encourage Exchanges to conduct outreach broadly as well as in ways that are accessible to people with disabilities, individuals with low literacy, and those with limited English proficiency. In addition, we encourage Exchanges to target specific groups including hard to reach populations and populations that experience health disparities due to low literacy, race, color, national origin, or disability, including mental illnesses and substance use disorders.

c. Navigator Program Standards (§ 155.210)

In § 155.210, we propose the standards for the Navigator program, consistent with section 1311(i) of the Affordable Care Act. The Navigator standards apply to the Exchange including both the individual market and SHOP. In paragraph (a), we propose the general standard that Exchanges must award grant funds to public or private entities to serve as Navigators. In paragraph (b)(1), we propose the eligibility requirements for and the types of entities to which the Exchange may award Navigator grants. We propose that Navigators must be capable of carrying out those duties established in paragraph (d) of this subsection. In addition, a Navigator must demonstrate to the Exchange, as required by section 1311(i)(2)(A) of the Affordable Care Act, that the entity has existing relationships, or could readily establish relationships with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be eligible to enroll in a QHP through the Exchange. We note that an entity need not have the ability to form relationships with all relevant groups in order to be eligible for Navigator funding; for example, an entity that can effectively conduct outreach to rural areas may not be as effective in urban areas.

We further propose in paragraph (b)(1)(iii) that a Navigator must meet any licensing, certification or other standards prescribed by the State or Exchange, as appropriate, consistent with section 1311(i)(4)(A) of the Affordable Care Act. This will allow the State or Exchange to enforce existing licensure standards (such as verifying that agents who seek to be Navigators are licensed), certification standards, or regulations for selling or assisting with enrollment in health plans and to establish new standards or licensing requirements tailored to Navigators (such as participating in periodic trainings), as appropriate.

We further propose in paragraph (b)(1)(iv) that any entity that serves as a Navigator may not have conflict of interest during the term as Navigator. We specify ''during the term as a Navigator'' because we want to ensure that an entity that might have formerly had a conflict would not be excluded from consideration if that conflict no longer exists. We clarify that these standards would not exclude, for example, a non-profit community organization that previously received grant funding from a health insurance issuer from serving as a Navigator. We seek comment on whether we should propose additional requirements on Exchanges to make determinations regarding conflicts of interest.

Section 1311(i)(2)(B) of the Affordable Care Act identifies entities which may be eligible to serve as Navigators, including ''other entities'' pursuant to section 1311(i)(2)(B) insofar as they meet the requirements of section 1311(i)(4). In paragraph (b)(2), we propose that the Exchange include at least two of the types of entities listed in Section 1311(i)(2)(B) as Navigators. We seek comment as to whether we should require that at least one of the two types of entities serving as Navigators include a community and consumer-focused non-profit organization, or whether we should require that Navigator grantees reflect a cross section of stakeholders. We note that Indian tribes, tribal organizations, and urban Indian organizations may be eligible, along with State or local human service agencies.

In paragraph (c), we codify the statutory prohibitions on Navigator conduct in the Exchange. Consistent with 1311(i)(4) of the Affordable Care Act, health insurance issuers are prohibited from serving as Navigators and a Navigator must not receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any qualified individuals or qualified employees in a QHP. Such consideration includes, without limitation, any monetary or non-monetary commission, kick-back, salary, hourly-wage or payment made directly or indirectly to the entity or individual from the QHP issuer. These provisions would not preclude a Navigator from receiving compensation from health insurance issuers in connection with enrolling individuals, small employers or large employers in non-QHPs. We seek comment on this issue and whether there are ways to manage any potential conflict of interest that might arise.

In paragraph (d), we set forth the minimum duties of a Navigator. The Exchange may require that a Navigator meet additional standards and carry out duties so long as such standards are consistent with requirements set forth herein. We clarify that as part of its obligation to establish the Navigator program and oversee the grants, the Exchange must ensure that Navigators are performing their duties as required. Duties include maintaining expertise in eligibility, enrollment, and program specifications and conducting public education activities to raise awareness of the availability of QHPs.

We also propose that the information and services provided by the Navigator be fair, accurate, and impartial and acknowledge other health programs. The Affordable Care Act requires the Secretary to collaborate with the States to develop standards related to this requirement. We are considering standards related to content of information shared, referral strategies, and training requirements to include in grant award conditions. We welcome comment on potential standards to ensure that information made available by Navigators is fair, accurate, and impartial.

The Navigator must also facilitate enrollment in a QHP through the Exchange and provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman, or any other appropriate State agency or agencies for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage. Further the Navigator must provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange. We seek comment regarding any specific standards we might issue through future rulemaking or additional guidance on these proposed requirements that we might further develop.

In paragraph (e), we codify the statutory restriction from section

1311(i)(5) of the Affordable Care Act that the Exchange is prohibited from supporting the Navigator program with Federal funds received by the State for the establishment of Exchanges. Thus, the Exchange must use operational funds generated through non-Federal sources (pursuant to section 1311(d)(5)) including general operating funds, to fund the Navigator program. If the State chooses to permit or require Navigator activities to address Medicaid and CHIP administrative functions, and such functions are performed under a contract or agreement that specifies a method for identifying costs or expenditures attributable to Medicaid and CHIP activities, the Medicaid or CHIP agencies may claim Federal funding for a share of expenditures incurred for such activities at the administrative Federal financial participation rate described in 42 CFR 433.15 for Medicaid and 42 CFR 457.618 for CHIP.

Finally, we are considering a requirement that the Exchanges ensure that the Navigator program is operational with services available to consumers no later than the first day of the initial open enrollment period. Since consumers will likely require significant assistance to understand options and make informed choices when selecting health coverage, we believe it is important that Exchanges begin the process of establishing the Navigator program by awarding grants and training grantees in time to ensure that Navigators can assist consumers in obtaining coverage throughout the initial open enrollment period. We seek comment on this timeframe under consideration.

d. Ability of States to Permit Agents and Brokers to Assist Qualified Individuals, Qualified Employers, or Qualified Employees Enrolling in QHPs (§ 155.220)

Section 1312(e) of the Affordable Care Act gives States the option to permit agents or brokers to assist individuals enrolling in QHPs through the Exchange. This includes allowing agents and brokers to enroll qualified individuals, qualified employers, or qualified employees in QHPs and to assist individuals with applications for advance payments of the premium tax credit and cost-sharing reductions. We propose to codify this option under paragraph (a) of § 155.220.

We note that the standards described in this section would not apply to agents and brokers acting as Navigators. Any entity serving as a Navigator, including an agent or broker, may not receive any financial compensation from an issuer for helping an individual or small group select a specific QHP, consistent with § 155.210. We also clarify that the statute permits agents and brokers to assist with applications for advance payments of the premium tax credit and cost-sharing reductions.

To ensure that individuals and small groups have access to information about agents and brokers should they wish to use one, in paragraph (b) we propose to permit an Exchange to display information about agents and brokers on its Web site or in other publicly available materials.

We recognize that there are web-based entities and other entities with experience in health plan enrollment that are seeking to assist in QHP enrollment in several ways, including: by contracting with an Exchange to carry out outreach and enrollment functions, or by acting independently of an Exchange to perform similar outreach and enrollment functions to the Exchange. To the extent that an Exchange contracts with such an entity, the Exchange would need to adhere to the requirements proposed for eligible contracting entities at § 155.110(a).

In the event that the Exchange contracts with such web-based entities, the Exchange would remain responsible for ensuring that the statutory and regulatory requirements pertinent to the relevant contracted functions are met. We understand that such entities may provide an additional avenue for the public to become aware of and access QHPs, but we also note that advance payments of the premium tax credit and cost-sharing reductions may only be accessed through an Exchange. We seek comment on the functions that such entities could perform, the potential scope of how these entities would interact with the Exchanges and what standards should apply to an entity performing functions in place of, or on behalf of, an Exchange. We also seek comment on the practical implications, costs, and benefits to an Exchange that coordinates with such entities, as well as any security- or privacy-related implications of such an arrangement.

e. General Standards for Exchange Notices (§ 155.230)

Notices are developed to ensure that applicants, qualified individuals, and enrollees understand their eligibility and enrollment status, including the reason for receipt of the notice and information about any subsequent action(s) they must take.

In paragraph (a), we propose that any notice sent by an Exchange pursuant to this part must be in writing and include (1) contact information for customer service resources, which might include web-based information, call center, Navigators, or consumer assistance programs; (2) an explanation of rights to appeal, if applicable; and (3) a citation to the specific regulation serving as the cause for notice.

In paragraph (b), we propose all applications, forms, and notices must be provided in plain language. In addition, applications, forms and notices should be written in a manner that meets the needs of diverse populations by providing meaningful access to limited English proficient individuals and ensuring effective communication for people with disabilities. As such, there are a number of ways that the Exchange may provide such access including provision of information about the availability and steps to obtain oral interpretation services, information about the languages in which written materials are available, and the availability of materials in alternate formats for persons with disabilities. We seek comment regarding whether we should codify these examples as requirements in the final rule as well as any other requirements we might consider to provide meaningful access to limited English proficient individuals and to ensure effective communication for people with disabilities.

In paragraph (c), we propose that the Exchange annually re-evaluate the appropriateness and usability of the applications, forms, and notices and in consultation with HHS in instances when changes are made. As the program evolves, we anticipate that the Exchange may be able to improve the tools used to collect information and inform individuals about their eligibility and coverage options.

f. Payment of Premiums (§ 155.240)

The Affordable Care Act includes some references to payment of premiums through an Exchange. While we do not require or limit the methods of premium payment in connection with individual market coverage, we note that an Exchange generally has three options: (1) Take no part in payment of premiums, which means that enrollees must pay premiums directly to a QHP issuer; (2) facilitate the payment of premiums by enrollees by creating an electronic ''pass-through'' of premiums without directly retaining any of the payments; or (3) establish a payment option where the Exchange collects premiums from enrollees and pays an aggregated sum to the QHP issuers.

Section 1312(b) of the Affordable Care Act states that a qualified individual enrolled in a QHP may pay any applicable premium directly to the

issuer. We propose to codify this Exchange requirement in paragraph (a) of § 155.240. We interpret this to mean that while an Exchange may exercise any of the options listed above, pursuant to section 1312(b), it must always allow an individual to pay directly to the QHP issuer if he or she chooses, regardless of whether an Exchange has elected to establish another option for premium payment. This requirement does not preclude an Exchange from facilitating or aggregating premium payments, if it chooses to do so.

In paragraph (b), we propose that an Exchange may permit Indian tribes, tribal organizations and urban Indian organizations to pay the QHP premiums on behalf of qualified individuals, subject to the terms and conditions determined by the Exchange. Comments in response to the November 12, 2010 HHS tribal consultation letter and the RFC suggest that premiums may present an obstacle for Indians and suggested that we consider implementation of a process for a tribe to pay premiums on behalf of its members since premiums cannot be waived for Indians.

An Exchange may consider setting-up an upfront group payment mechanism similar to the mechanism currently used by some tribes to enroll members in the Medicare Prescription Drug Program. Under that program, tribes offer a selection of plans from which their members may choose, thus limiting the members' options. We seek comment on whether this approach would work in an Exchange and how such an approach might be tailored to fit the Exchange.

We note that section 402 of the Indian Health Care Improvement Act (IHCIA) permits Indian tribes, tribal organizations, and urban Indian organizations to purchase health benefits coverage for IHS beneficiaries. As a result, the payment of premiums that we propose under this section is more inclusive than other Exchange provisions (special enrollment periods and cost-sharing rules) that pertain to Indians. We invite comment on how to distinguish between individuals eligible for assistance under the Affordable Care Act and those who are not in light of the different definitions of ''Indian'' that apply for other Exchange provisions.

In paragraph (c), we propose that, in the operation of a SHOP, an Exchange must accept payment of an aggregate premium by a qualified employer pursuant to the standards set forth in § 155.705(b)(4).

In paragraph (d), we propose that an Exchange may facilitate through electronic means the collection and payment of premiums. This could include the Exchange acting as a simple pass-through or the Exchange collecting and distributing premiums to QHP issuers.

Additionally, we propose in paragraph (e) that an Exchange choosing to offer enrollees payment through electronic means must conform to any standards and protocols (including privacy and security) required under § 155.260 and § 155.270.

If an Exchange elects to facilitate the collection and payment of premiums, it must establish administrative protocols to ensure the integrity of the financial transactions. We clarify that premium collection by the Exchange does not make the Exchange liable for payment. For example, if an individual is late making a payment or misses a premium payment, the Exchange would not have to make a payment on behalf of the individual. We seek comments concerning Exchange flexibility in establishing the premium payment process and what standards would be appropriate for the Federal government to establish in regulations to ensure fiduciary accountability in the case of an Exchange that collects premiums.

g. Privacy and Security of Information (§ 155.260)

In § 155.260, we address the privacy and security standards Exchanges must establish and follow. Each Exchange will need to obtain applicants' personally identifiable information, such as names, social security numbers, addresses, dates of birth, and tax returns or other financial information during the application process discussed in § 155.405 as part of the eligibility determination process required by § 155.200(c) of this subpart. In addition to the proposals in this part, part 156 requires QHP issuers to provide personally identifiable information to the Exchange on a regular basis. We propose to require that the Exchange apply appropriate security and privacy protections when collecting, using, disclosing or disposing of personally identifiable information it collects. In addition, we propose to require contractual terms that impose these standards on contractors or sub-contractors that fulfill Exchange functions or access information from or on behalf of the Exchange.

In paragraph (a), we propose to define the term ''personally identifiable information'' in this context as information that, alone or when combined with other personal or identifying information which is linked or linkable to a specific individual, can reasonably be used to distinguish or trace an individual's identity. We propose that the term applies to information collected, received or used by the Exchange as part of its operations. Consistent with section 1411(g) of the Affordable Care Act, in paragraph (b), we propose limiting the collection, use, and disclosure of personally identifiable information to what is specifically required or permitted by § 155.260, other applicable law, subpart E of this part, the standards established in accordance with § 155.200(c) of this subpart, and section 1942(b) of the Act. We note that Exchanges may not collect, use, or disclose personally identifiable information if prohibited by another law. We invite comment as to whether and how we should restrict the method of disposal in this section as well.

The Affordable Care Act provides specific privacy and security standards at sections 1411(g), 1413(c)(2), and 1414(a)(1) for some, but not all, types of information flowing to and from the Exchange. Furthermore, we recognize that some or all of the Exchanges may be HIPAA covered entities (health plans, health care clearinghouses and health care providers that conduct certain electronic transactions covered by HIPAA) or business associates of HIPAA covered entities; in such cases, some or all exchange privacy and security responsibilities regarding individuals' health information may be governed by HIPAA. Therefore, in addition to other standards mentioned directly by the Affordable Care Act, HIPAA may dictate the appropriate privacy and security standards for some Exchanges, and may serve as guidance on appropriate privacy and security practices for others. Each Exchange should engage in an analysis of its operations and functions and determine its HIPAA status based on the definitions in § 160.103 in subchapter C of 45 CFR. That analysis will be fact-intensive and will depend heavily on the decisions of each State about how the Exchange will be set up and on the functions and services the Exchange performs, including those functions it performs with respect to QHPs, Medicaid and CHIP. Regardless of whether an Exchange is subject to HIPAA as a covered entity or as a business associate, we propose that the Exchanges implement safeguards to ensure that any and all personally identifiable information received, used, stored, transferred, or prepared for disposal by an Exchange is subject to adequate privacy and security protections. For an Exchange that is subject to HIPAA, the privacy and security standards imposed by HIPAA

must be followed with respect to information that is ''protected health information.''

Because each Exchange may have different needs and structures and work in different capacities, it is difficult to create a uniform set of detailed privacy and security standards that we could propose to apply to all Exchanges. That said, we believe that HIPAA provides certain universally appropriate security standards. We therefore propose to require that the security standards of the Exchange (and which the Exchange must contractually impose on contractors and subcontractors) are consistent with HIPAA security rules described at 45 CFR 164.306, 164.308, 164.310, 164.312, and 164.314. These rules provide tested and familiar guidelines that should ensure the proper handling of applicant and enrollee information. Again, and as explained below, we propose to require contractual requirements that apply these security standards to contractors or sub-contractors that receive information from the Exchange or fulfill Exchange functions.

Privacy policies for the Exchanges will need to allow for the appropriate collection, receipt, use, disclosure and disposal of the various kinds of information including health, financial and other types of personally identifiable information. For Exchanges not subject to HIPAA as covered entities or as business associates, while HIPAA may provide an appropriate model for the protection of the privacy of health information, we are concerned about its applicability to all data passing through Exchanges—specifically, tax return information protected by 6103 of the Code. As such, we are not proposing to adopt a selection of HIPAA privacy standards as the minimum protections for data at all Exchanges. Rather, we propose to provide States with the flexibility to create a more appropriate and tailored standard. We are considering requiring each Exchange to adopt privacy policies that conform to the Fair Information Practice Principles (FIPPs). We believe that FIPPs will afford an appropriate baseline of privacy protections regarding the use, disclosure and disposal of personally identifiable information.[6] The FIPPs have been incorporated into both the privacy laws of many States with regard to government-held records[7] and numerous international frameworks, including the OECD's privacy guidelines, the EU Data Protection Directive, and the APEC Privacy Framework.[8] Specifically, the principles include: (1) Individual Access; (2) Correction; (3) Openness and Transparency; (4) Individual Choice; and (5) Collection, Use, and Disclosure Limitations. We note that we plan to address collection limitations in the eligibility standards established pursuant to § 155.200(c) of this part. We welcome comments on the appropriateness of the FIPPs in this context and the best means to integrate FIPPs into the privacy policies and operating procedures of individual Exchanges while allowing for adaptability to each Exchange's particular structure and operations. We also solicit comment on the aptness of adopting the HIPAA privacy model for Exchanges. Again, we note that an Exchange that is subject to HIPAA must comply with both the privacy and security standards imposed by HIPAA with respect to protected health information.

We also propose in paragraph (b) to adopt several additional requirements for the privacy and security policies and procedures of Exchanges. We propose requiring that the policies and procedures be in writing and available to the Secretary of HHS, and that this writing identify any applicable laws that the Exchange will need to follow. We also propose to require that the Exchange must, in any contract or agreement with a contractor, require that information provided to, created by, received by, and subsequently disposed of by the contractor or any of its subcontractors be protected by the same or higher privacy and security standards than are applicable to the Exchange. We believe that this will ensure that all contractors and subcontractors that fulfill Exchange functions are subject to adequate privacy and security standards. Last, we are considering imposing a requirement that each Exchange implement some form of authentication procedure for ensuring that all entities interacting with Exchanges are who they claim. We are currently working with other Federal agencies to determine the best methods of authentication to ensure the identities of parties accessing information in or furnishing information to Exchanges.

In paragraph (c), we propose an additional requirement related to data matching arrangements that are made between the Exchange and agencies that administer Medicaid and CHIP in States for the exchange of eligibility information. The Exchange must participate in the data matching program required by section 1413(c)(2) of the Affordable Care Act consistent with the privacy and security standards described in section 1942(b) of the Act and in other applicable laws. We expect Exchanges and the Medicaid and CHIP agencies to execute data use agreements that prevent the unauthorized use or disclosure of personally identifiable information and prohibit the Exchange or State agency from seeking to obtain or provide information that it will not, or does not reasonably expect to, use. We propose to adopt these same requirements as data privacy and security requirements for Exchanges.

In paragraph (d), we also propose to require Exchanges to adopt privacy and security policies and procedures that meet the standards in section 6103 of the Code that protect the confidentiality of tax returns and tax return information. Section 1414(a)(1) of the Affordable Care Act added section 6103(l)(2) to the Code to authorize the disclosure of certain tax return information to carry out eligibility determinations for advance payments of the premium tax credit and certain other government-sponsored health programs, subject to the confidentiality and safeguarding requirements of section 6103 of the Code. We are currently working with the Secretary of the Treasury and States to ensure that Treasury-required safeguards for tax information will be met across the information technology architecture.

Finally, in paragraph (e), we propose to codify the requirement in section 1411(h)(2) of the Affordable Care Act that provides that any person that knowingly and willfully uses or discloses personally identifiable information in violation of section 1411(g) of the Affordable Care Act will be subject to a civil money penalty of not more than $25,000 per disclosure and be subject to any other applicable penalties that may be prescribed by law. We propose to interpret section 1411(h)

[6] In 1973, the Department of Health, Education, and Welfare (HEW) released its report, *Records, Computers, and the Rights of Citizens,* which outlined a Code of Fair Information Practices that would create ''safeguard requirements'' for certain ''automated personal data systems'' maintained by the Federal Government. This Code of Fair Information Practices is now commonly referred to as fair information practice principles (FIPPs) and established the framework on which much privacy policy would be built. There are many versions of the FIPPs; the principles described here are discussed in more detail in *The Nationwide Privacy and Security Framework for Electronic Exchange of Individually Identifiable Health Information,* December 15, 2008. *http://healthit.hhs.gov/portal/server.pt/community/healthit_hhs_gov__privacy___security_framework/1173.*

[7] Pritts, J.L., Altered States: State Health Privacy Laws and the Impact of the Federal Health Privacy Rule (Spring 2002), 2 Yale J. Health Pol'y L. & Ethics 325.

[8] See Department of Commerce, Internet Policy Task Force, Commercial Data Privacy, and Innovation in the Internet Economy: A Dynamic Policy Framework, (Washington, D.C.: 2010).

to apply the civil money penalty of $25,000 to each violation of section 1411(g).

h. Use of Standards and Protocols for Electronic Transactions (§ 155.270)

In this section, we propose to apply certain standards and protocols to the operation of Exchanges. We consider these requirements to be important considerations in the development and operation of Exchange information technology systems, and as such, propose them here as requirements for Exchanges.

In paragraph (a), we propose to apply the HIPAA administrative simplification requirements. To the extent that the Exchange performs electronic transactions with a covered entity, including State Medicaid programs and QHP issuers, the Exchange must use standards and operating rules adopted by the Secretary pursuant to 45 CFR parts 160 and 162.

In paragraph (b), we propose to codify the HIT enrollment standards and protocols that were developed pursuant to section 3021 of the PHS Act, which was added by section 1561 of the Affordable Care Act, and that were adopted by the Secretary.[9] Such standards and protocols will be incorporated within Exchange information technology systems as required under the Exchange cooperative agreements awarded pursuant to section 1311(a) of the Affordable Care Act.

4. Subpart E—Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans

In subpart E, we outline the initial, annual, and special enrollment periods as well as the enrollment process and the termination of coverage process. The standards established by the Exchange in accordance with this subpart will facilitate the enrollment of qualified individuals into QHPs and the transfer of enrollees from one QHP to another. For the purposes of this subpart, any reference to enrollee means a qualified individual who enrolls in a QHP through the Exchange.

In response to the RFC, many commenters suggested that States should design systems for the Exchange by either building off of existing systems that are in place for Medicaid and CHIP or, alternatively, developing new systems that would serve the Exchange as well as advance payments of the premium tax credit, cost-sharing reductions, Medicaid and CHIP. Comments also focused on the importance of a streamlined enrollment process. In addition, many commenters recommended that the initial open enrollment period be longer and more flexible than subsequent annual open enrollment periods while others suggested enrollment periods be structured so as not to encourage migration in and out of the Exchange.

Commenters also suggested that we follow HIPAA and Medicare guidelines when establishing qualifying events that trigger special enrollment periods. Some suggested that there should not be a single open enrollment period for all eligible individuals but instead, a staggered open enrollment so as not to place excessive administrative burdens on Exchanges, States, and QHP issuers. We also received comments supporting a lag between enrollment periods and effective dates to provide time for enrollment, billing, and other information to be processed, as well as to allow time for QHP issuers to produce and mail consumer identification cards and any necessary start-up communications.

a. Enrollment of Qualified Individuals into QHPs (§ 155.400).

Section 155.400 addresses that the Exchange must: Accept a QHP selection from an applicant who is determined eligible for enrollment in a QHP, notify the issuer of the applicant's selected QHP, and transmit information necessary to enable the QHP issuer to enroll the applicant.

In paragraph (b), we propose that the Exchange must send QHP issuers enrollment information on a timely basis; we anticipate issuing further guidance on this timing. In addition, the Exchange will be required to develop a process by which QHP issuers can verify and acknowledge the receipt of enrollment information. While it would be ideal for information sharing to occur on a real-time basis, we are not certain that all parties will have the necessary functionality for real-time information sharing by 2014. As such, we encourage real-time processing and acknowledgement of enrollment information; we seek comment as to whether we should consider codifying a requirement for a specific frequency for enrollment transactions such as in real time or daily in our final rule.

To ensure that the Exchange and QHP issuers have identical plan enrollment records, we propose under paragraphs (c) and (d) that the Exchange maintain records of enrollment, submit enrollment information to HHS, and reconcile the enrollment files with the QHP issuers no less than on a monthly basis.

b. Single Streamlined Application (§ 155.405)

Section 1413(b)(1)(A) of the Affordable Care Act requires that the Secretary develop and provide to each State a single, streamlined form that may be used to apply for advance payments of the premium tax credit, cost-sharing reductions, Medicaid, CHIP, and the BHP, if a BHP is operating in the Exchange service area, and that must be structured to maximize an applicant's ability to complete the form satisfactorily, taking into account the characteristics of individuals who qualify for the programs. Section 1311(c)(1)(F) of the Affordable Care Act states that an issuer shall use a uniform enrollment form for qualified individuals and employers to enroll in QHPs through the Exchange, and that the enrollment form must take into account criteria developed by the NAIC. In § 155.405 we describe a single streamlined application and standards for any alternative application developed by the Exchange that incorporate both eligibility and enrollment, in order to facilitate an efficient process.

In paragraph (a), we propose that the Exchange use a single streamlined application to collect information necessary for QHP enrollment, advance payments of the premium tax credit, cost-sharing reductions, and Medicaid, CHIP, and the BHP, if a BHP is operating in the Exchange service area. We propose use of a single streamlined application to limit the amount of information and number of times an individual must make submissions to receive an eligibility determination and complete the enrollment process. HHS plans to create both a paper-based and web-based dynamic application. We anticipate that the electronic application will enable many applicants to complete the eligibility and QHP selection process in a single online session.

In paragraph (b), we propose that if the Exchange seeks to use an alternative application it must be approved by HHS. The alternative application should collect the information necessary to support an eligibility determination and to process enrollment through the programs described in paragraph (a). Our intent is to simplify the application process and reduce, if not eliminate, the collection of extraneous information. We seek comment regarding whether we should codify a requirement that applicants may not be required to answer questions that are not pertinent to the eligibility and enrollment process.

[9] *http://healthit.hhs.gov/portal/server.pt?open=512&mode=2&objID=3161.*

In paragraph (c), we propose that the Exchange must accept applications from multiple sources, including the applicant; an authorized representative (we propose this to be defined by State law); or someone acting responsibly for the applicant. In addition, section 1413(b)(1)(A)(ii) of the Affordable Care Act sets forth requirements regarding mechanisms by which an individual may file an application. In paragraph (c)(2), we propose that an individual must be able to file an application online, by telephone, by mail, or in person. We solicit comments on the requirement that an individual must be able to file an application in person.

We reserve paragraphs (d) and (e) for future rulemaking.

In regard to requests for personally identifiable information that the Exchange will collect during the application process, we are contemplating standards for the final rule for information collection based on the Fair Information Practices Principles (FIPPs) framework. For a more detailed discussion on FIPPs, see the preamble to 155.260. According to FIPPs, applicants should be given notice of an entity's information practices before any personal information is collected from them so that they are able to make an informed decision about whether and to what extent to disclose their personal information.

c. Initial and Annual Open Enrollment Periods (§ 155.410)

Section 1311(c)(6) of the Affordable Care Act directs the Secretary to establish an initial open enrollment period and an annual open enrollment period. In § 155.410, we propose standards for Exchanges related to the initial and annual open enrollment periods. Our proposed timeframes are informed by both the experience implementing Medicare Advantage and the Medicare Prescription Drug Benefit Program, as well as information from FEHBP.

In paragraph (a)(1), we propose that the Exchange adhere to the initial and annual open enrollment periods set forth in this section and indicate that qualified individuals and enrollees may begin or change coverage in a QHP at such times. In paragraph (a)(2), we propose that the Exchange may only permit a qualified individual to enroll in a QHP or an enrollee to change QHPs during the initial open enrollment period specified in paragraph (b), the annual open enrollment period specified in paragraph (e), or a special enrollment period described in § 155.420 for which the qualified individual or enrollee has been determined eligible.

In paragraph (b), we propose an initial open enrollment period that allows a qualified individual to enroll in a QHP from October 1, 2013 through February 28, 2014. We want to ensure that qualified individuals have sufficient time to learn about Exchange coverage, compare options, and ultimately enroll. In addition, we seek to provide the maximum flexibility for the information management system of the Exchange to be designed, built, tested, and ready for January 1, 2014 coverage in addition to the time needed to certify QHPs.

We believe that consumers should have an initial open enrollment period that extends beyond January 1, 2014 to allow for outreach and education beyond the first potential date of coverage. We recognize that extending the initial open enrollment period into 2014 will require flexibility on the part of QHPs because some enrollees will have fewer than 12 months of coverage in the first year. As such, we seek to balance the needs of consumers with the interest of QHPs to have individuals enrolled for as close to a full coverage year as possible. We seek comment on the duration of the initial open enrollment period.

In paragraph (c), we propose rules regarding the effective date of coverage for the initial open enrollment period based on the date on which the Exchange receives a QHP selection from an individual, in order to allow appropriate time for QHP issuers to process QHP selections. In paragraph (c)(1), we propose that for a QHP selection received by the Exchange on or before December 22, 2013, the Exchange must ensure an effective date of January 1, 2014. In paragraph (c)(2), we propose that for a QHP selection received by the Exchange between the first and twenty-second day of any subsequent month during the initial open enrollment period, the Exchange must ensure an effective date on the first day of the following month. In paragraph (c)(3), we propose that for a QHP selection received by the Exchange between the twenty-third and last day of the month for any month between December, 2013 and February 28, 2014, the Exchange must ensure an effective date of either the first day of the following month or the first day of the second following month.

In general, we propose to apply this approach to effective dates for the annual open enrollment period and for special enrollment periods as well. This proposal is designed to minimize the time between enrollment and coverage effective dates, while leaving sufficient time to ensure that QHP selections can be fully processed by QHP issuers. In addition, the proposal provides the Exchange with flexibility to work with QHP issuers to implement selections received between the twenty-third and last day of the month on either the first of the following month or the first of the second following month, which allows the Exchange and QHP issuers to choose to process enrollments more quickly to the extent possible.

We note that the coverage effective date may not be set or enrollment information sent from the Exchange to the QHP until the individual is determined eligible to purchase coverage through the Exchange. Section 36B(c)(2)(A)(i) of the Affordable Care Act specifies that advance payments of the premium tax credit may only be provided for an enrollee who is enrolled in a QHP on the first of the month. As such, in order to coordinate coverage in a QHP with the advance payments of the premium tax credit that support the purchase such coverage, we propose to establish that coverage in a QHP may only begin on the first of the month. However, we seek comment as to whether we should consider allowing at least twice-monthly effective dates of coverage or complete flexibility to allow for coverage to begin any day for individuals who forego receipt of such credit for their first partial month or who are not eligible to receive advance payments of the premium tax credit.

In paragraph (d), we propose that the Exchange must send written notification to enrollees about the annual open enrollment period. We are considering codifying the requirement that such notice must be sent no later than 30 days before the start of the annual open enrollment period in our final rule. Further, we believe the notice may require inclusion of specific information and we seek comment regarding whether we should codify such requirements for information pertaining to: (1) The date annual open enrollment begins and ends, (2) where individuals may obtain information about available QHPs, including the Web site, call center, and through Navigator assistance, and (3) other relevant information.

In paragraph (e), we propose an annual open enrollment period from October 15 through December 7 of each year, starting in October 2014 for coverage beginning January 1, 2015. As an alternative annual open enrollment period, we considered November 1 through December 15 of each year to provide a 45-day window close to the end of the year that would be easy to remember. We welcome comments

regarding our proposed and alternative approach for the annual open enrollment period.

In paragraph (f), we propose that the Exchange must ensure coverage is effective as of the first day of the following benefit year for a qualified individual who has made a QHP selection during the annual open enrollment period.

We seek comment regarding whether we should require Exchanges to automatically enroll individuals who received advance payments of the premium tax credit and are then disenrolled from a QHP because the QHP is no longer offered if such individual does not make a new QHP selection. We also seek comment regarding whether we should codify requirements in the final rule regarding automatic enrollment of individuals into new QHPs when there are mergers between issuers or when one QHP offered through a specific issuer is no longer offered but there are other options available to the individual through the same issuer. Further, if we were to provide for automatic enrollment, we seek comment as to how far such automatic enrollment should extend.

We reserve paragraph (g) for future rulemaking.

d. Special Enrollment Periods (§ 155.420)

In accordance with section 1311(c)(6)(C) of the Affordable Care Act, the Secretary must establish special enrollment periods. The statute requires use of the special enrollment periods in section 9801 of the Code and, where relevant, special enrollment periods similar to those in the Medicare Prescription Drug Program. In § 155.420, we propose standards to address this statutory requirement. In paragraph (a) of this section, we specify that the Exchange must allow a qualified individual or enrollee to enroll in a QHP or change from one QHP to another outside of the annual open enrollment period, if such individual qualifies for a special enrollment period.

In paragraph (b), we propose that, in general, the effective dates for QHP selections based on special enrollment periods follow the proposed effective dates for QHP selections during the initial or annual open enrollment periods described in § 155.410(c) of this subpart. First, in paragraph (b)(1), we propose that once determined eligible for a special enrollment period, the Exchange must ensure that a qualified individual or enrollee's effective date is on the first day of the following month for all QHP selections made by the 22nd of the previous month, and on either the first day of the following month or the first day of the second following month for all QHP selections made between the 23rd and last day of a given month. We provide an exception in the case of birth, adoption or placement for adoption, for which coverage must be effective on the date of birth, adoption, or placement for adoption.

In paragraph (c), we propose a standard length of 60 days for each special enrollment period from the date of the triggering event unless the applicable regulation provides otherwise. We believe that having a standardized length for special enrollment periods will simplify administrative processes and accommodate the needs of individuals undergoing significant life changes, although we note that we raise alternatives for the special enrollment periods proposed in paragraphs (d)(6) and (d)(7) of this section in the preamble associated with those paragraphs. We request comment on the alternatives raised for the special enrollment periods described in paragraphs (d)(6) and (d)(7) and whether others, such as (d)(4), should have an alternate start date.

In paragraph (d), we propose specific special enrollment periods. We note that all requests for special enrollment periods must be evaluated by the Exchange as part of the eligibility determination process established pursuant to § 155.200(c) of this part. For purposes of special enrollment periods provided herein, we interpret dependent to mean any individual who is or may become eligible for coverage under the terms of a QHP because of a relationship to an enrollee (including the enrollee's spouse). In paragraph (d)(1), we propose that the Exchange permit a qualified individual and any dependents to enroll in a QHP due to loss of other minimum essential coverage. We interpret loss of coverage to include any event that triggers a loss of eligibility for other minimum essential coverage. We further propose that a dependent of a current enrollee in a QHP and the enrollee are each eligible for a special enrollment period if the dependent loses other minimum essential coverage. Examples of loss of coverage include decertification of a QHP that occurs outside of the annual open enrollment period. In such cases, an enrollee would be allowed to select and enroll in a new QHP upon notification of plan decertification. If the enrollee does not select a new QHP before the effective date of plan termination, he or she would be provided 60 days from the date of plan termination, which is the triggering event, to select a new QHP.

Other examples of events that would qualify as loss of coverage include but are not limited to the following: legal separation or divorce ending eligibility of a spouse or step-child enrolled in other minimum essential coverage as a dependent; end of dependent status (such as attaining the maximum age to be eligible as a dependent child under the plan); death of an individual enrolled in minimum essential coverage ending eligibility for covered dependents; termination of employment or reduction in the number of hours of employment necessary to maintain coverage; or relocation outside of the service area of the QHP. Examples of relocation include relocation to the United States (US) in the case of a US citizen, national, or lawfully present individual who was not previously eligible for Exchange participation while residing outside of the US; release from incarceration; moving from the jurisdiction of one Exchange to another; or relocating outside of the individual's QHP's service area.

In accordance with section 9801(f) of the Code, we propose that loss of coverage also include: termination of employer contributions for a qualified individual or dependent who has coverage that is not COBRA continuation coverage by any current or former employee, exhaustion of COBRA continuation coverage, reaching a lifetime limit on all benefits in a grandfathered plan, and termination of Medicaid or CHIP. We vary from the Code for this first special enrollment period by specifying only loss of minimum essential coverage rather than loss of any coverage because of the requirement in section 5000A of the Affordable Care Act that qualified individuals and their dependents must maintain essential coverage. If otherwise qualified individuals who maintained less than minimum essential coverage were granted a special enrollment period based on termination of such coverage, such individuals might wait until experiencing a significant health care need to enroll in a QHP through the Exchange by using a special enrollment period. Such allowance could create a problem of adverse selection; we solicit comment on this provision.

Similar to the provisions outlined in section 9801 of the Code, we propose in paragraph (d)(2) a special enrollment period for a qualified individual who gains a dependent or becomes a dependent through marriage, birth, adoption or placement for adoption. We welcome comment as to whether States might consider expanding the special

enrollment period to include gaining dependents through other life events.

Similar to when an individual is newly eligible for Medicare and has a period of time to begin coverage in Medicare and to select a Medicare Prescription Drug Plan, we propose in paragraph (d)(3) that upon gaining status as a citizen, national, or lawfully present individual in the US, a qualified individual qualifies for a special enrollment period because the individual is newly eligible to purchase coverage. We view this initial enrollment period as the functional equivalent of a special enrollment period since it occurs outside of the annual open enrollment period and provides an opportunity for eligible individuals to gain access to coverage through a QHP.

The special enrollment periods that are proposed in paragraphs (d)(4) through (d)(7) are also patterned on the Medicare Prescription Drug Program. In paragraph (d)(4), we propose that qualified individuals who experience an error in enrollment receive a special enrollment period. This applies in any case where the Exchange finds that a qualified individual's enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange.

In paragraph (d)(5), we propose a special enrollment period for an individual enrolled in a QHP who adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to such individual and their dependents. One example of such a violation is material misrepresentation by the QHP issuer (or its agent, representative, or plan provider) when marketing the plan to the individual.

In paragraph (d)(6), we propose a special enrollment period for individuals who are newly eligible or newly ineligible for advance payments of the premium tax credit or have a change in eligibility for cost-sharing reductions. This proposal allows new enrollment or movement from one QHP to another. This special enrollment period would be granted for individuals who receive an eligibility determination for the first time for coverage through the Exchange or for individuals who experience a mid-year change in circumstance that changes their eligibility, including a change that ends their eligibility for advance payments of the premium tax credit. We propose this special enrollment period because we anticipate that individuals will decide whether to enroll in a QHP and choose a specific plan based in part on financial status and how financial status impacts eligibility. Additionally, qualified individuals and enrollees may wish to enroll in or change plans to take advantage of different benefit designs and plan cost structures as their eligibility changes. We seek comment as to whether the start of the 60 day special enrollment period, as discussed in 155.420(c), should be based on the date on which an individual experiences a change in eligibility or based upon the date of the eligibility determination.

In addition, sections 36B(c)(2)(C)(i) and (ii) of the Code specify that an individual may be determined eligible for advance payments of the premium tax credit or cost-sharing reductions in situations in which minimum essential coverage offered through an eligible employer-sponsored plan, as defined in section 5000A(f)(2) of the Code, is determined to no longer meet the minimum value requirement or be affordable for the upcoming plan year. We note that even if there is a special enrollment period, advance payments of the premium tax credit only apply if the individual is not enrolled in employer coverage. The proposal in paragraph (d)(6) would allow an individual in this situation to be determined eligible for this special enrollment period during the open enrollment period for the employer-sponsored health coverage or when the employee learns of the change in his or her eligible employer-sponsored plan, even if he or she is still covered by the eligible employer-sponsored plan at the time of eligibility determination. This is designed to ensure that such individuals will not be required to be uninsured prior to receiving a determination of eligibility for a special enrollment period. We request comment on the timing of the special enrollment period in this situation and whether the 60 day period should begin when the employee learns of the change(s) in the employer-sponsored coverage or when the employee terminates coverage by the employer-sponsored plan.

In paragraph (d)(7), we propose that if new QHPs offered through the Exchange are available to a qualified individual or enrollee as a result of a permanent move, such enrollee receives a special enrollment period. We propose that the special enrollment period begin on either the date of the permanent move or on the date the individual provides notification of such move and request comment on these alternatives. Individuals who move and have new QHP available to them as a result of the move, but continue to reside in the current plan service area, may use this special enrollment period to enroll in any QHP for which they are newly eligible in their new place of residence. It is the individual's responsibility to notify the Exchange or QHP that he/she is permanently moving.

We considered several options with respect to the start date for the special enrollment period proposed in paragraph (d)(7) regarding an individual or enrollee who gains access to new QHPs as a result of a permanent move. One option that we considered for the start date of this special enrollment period was either the date of the individual's permanent move, or the date on which the individual provides notice of the move, if an individual provides notice of his or her move within a reasonable timeframe. Under this option, we could establish the length of this special enrollment period either as 60 days from the start date or as 60 days from the date of the move or his or her notice of the move, whichever is later. We solicit comments on these options.

In paragraph (d)(8), we propose to codify the statutory special enrollment period that Indians receive a monthly special enrollment period as specified in section 1311(c)(6)(D) of the Affordable Care Act. We interpret the monthly special enrollment period to allow for an Indian to join or change plans one time per month. For purposes of this special enrollment period, section 1311(c)(6)(D) defines an Indian as specified in section 4 of the Indian Health Care Improvement Act (IHCIA). Section 4 of the IHCIA defines ''Indian'' as a member of a Federally-recognized tribe. We solicit comment on the potential implications on the process for verifying Indian status.

In paragraph (d)(9) we propose a special enrollment period for exceptional circumstances, as determined by the Exchange or HHS. This special enrollment period could be used for a variety of situations, including natural disasters such as hurricanes or floods. Exceptional circumstances include circumstances that would impede an individual's ability to enroll on a timely basis, through no fault of his or her own.

In paragraph (e), similar to section 9801 of the Code, we propose that loss of coverage does not include failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or situations allowing for a rescission as specified in 45 CFR § 147.128.

In paragraph (f) we propose that upon qualifying for a special enrollment period, the Exchange may only allow an existing enrollee of a QHP to change plans within levels of coverage as defined by 1302(d) of the Affordable Care Act. As an example, if an enrollee is in a silver level plan and gives birth to a child outside of the annual open enrollment period, the enrollee may add the child to her existing plan or change from one silver level plan to another; however, she may not move to a gold level plan. We propose this limitation to maintain a single level of coverage throughout the year to avoid adverse selection. We propose a single exception for new eligibility for advance payments of the premium tax credit or change in eligibility for cost-sharing reductions. We recognize that limiting enrollees such that they must stay within a specific coverage level during a special enrollment period could pose a challenge for an enrollee in a catastrophic plan that becomes pregnant. We request comment as to whether we should provide an exception for such circumstances.

We clarify that the Exchange will provide information, accept applications, perform eligibility determinations, and accept enrollments and send enrollment information to QHPs for individuals year round to accommodate special enrollment periods, and coverage through Medicaid and CHIP. Although most individuals will likely approach the Exchange during initial and annual open enrollment periods, individuals may approach the Exchange at all times. Further, the special enrollment periods that are required and set forth in § 155.420 are not the only applicable enrollment requirements. To the extent other law applies to require a special enrollment right from issuers, such law continues to apply. The Exchange special enrollment periods are a minimum requirement for the Exchange to permit enrollment outside of the initial and annual open enrollment periods.

e. Termination of Coverage (§ 155.430)

Pursuant to section 1321(a)(1) of the Affordable Care Act, in paragraph (a), we propose that the Exchange must determine the form and manner in which coverage in a QHP may be terminated.

In paragraph (b), we propose a set of events that would cause an enrollee's coverage in a QHP to be terminated. In paragraph (b)(1), we propose that the Exchange must permit an enrollee to terminate his or her coverage in a QHP with appropriate notice to the Exchange or the QHP. We anticipate that these voluntary termination requests will generally occur in situations in which an enrollee in a QHP has obtained other minimum essential coverage. In paragraph (b)(2), we propose that the Exchange may terminate an enrollee's coverage in a QHP, and must permit a QHP issuer to terminate such coverage in the following circumstances: (1) The enrollee is no longer eligible for coverage in a QHP through the Exchange; (2) the enrollee becomes covered in other minimum essential coverage; (3) payments of premiums for coverage of the enrollee cease, provided that the grace period for enrollees receiving advance payments of the premium tax credit, as specified in § 156.270(d) of this chapter, has elapsed; (4) the enrollee's coverage is rescinded in accordance with § 147.128 of this chapter; (5) the QHP terminates or is decertified by the Exchange as described in § 155.1080; or (6) the enrollee changes from one QHP to another during the annual open enrollment period, or a special enrollment period in accordance with § 155.410 or § 155.420.

To ensure the Exchange oversees the actions related to termination of coverage undertaken by QHPs, in paragraph (c), we propose that the Exchange must establish maintenance of records procedures for termination of coverage, track the number of individuals for whom coverage has been terminated and submit that information to HHS on a monthly basis, establish terms for reasonable accommodations, and retain records in order to facilitate audit functions.

In paragraph (d), we propose standards for the effective dates for termination of coverage. In paragraph (d)(1), we propose that in the case of a termination requested by an enrollee, the last day of coverage for an enrollee is the termination date specified by the enrollee, if the Exchange and QHP have a reasonable amount of time from the date on which the enrollee provides notice to terminate his or her coverage. We also propose that if the Exchange or the QHP do not have a reasonable amount of time from the date on which the enrollee provides notice to terminate his or her coverage, the last day of coverage is the first day after such reasonable amount of time has passed.

In paragraph (d)(2), we propose that in the case of a termination by the Exchange or a QHP as a result of an enrollee obtaining new minimum essential coverage, the last day of coverage is the day before the effective date of the new coverage. We solicit comments regarding how Exchanges can work with QHP issuers to implement this proposal, which is intended to ensure that an enrollee is not covered under two forms of minimum essential coverage simultaneously. Among the concerns about double coverage is that it makes an individual ineligible for the premium tax credit in accordance with section 36B(c)(2)(B) of the Code. We also note that as the Exchange establishes procedures for termination of coverage notification to enrollees, it should consider how it will also notify the issuer about effective dates of coverage termination.

In paragraph (d)(3), we propose that in the case of a termination by the Exchange or a QHP as a result of an enrollee changing QHPs, the last day of coverage in the enrollee's prior QHP is the day before the effective date of coverage in his or her new QHP. Lastly, in paragraph (d)(4), we propose that for a termination that is not described in paragraphs (d)(1)–(3), the last day of coverage is the fourteenth day of the month if the notice of termination is sent by the Exchange or termination is initiated by the QHP no later than the fourteenth day of the previous month or, the last day of the month if the notice of termination is sent by the Exchange or termination is initiated by the QHP no later than the last day of the previous month. As an example, if the Exchange notifies an enrollee of his or her termination on September 12, his or her coverage will terminate on October 14.

f. Reserved (§ 155.440)

5. Subpart H—Exchange Functions: Small Business Health Options Program (SHOP)

Section 1311(b)(1)(B) of the Affordable Care Act directs each State that chooses to operate an Exchange to establish insurance options for small businesses through a Small Business Health Options Program (SHOP). This program will enable small employers to offer affordable health plans to their employees. Subpart H of this part contains the proposed standards for Exchanges with respect to a SHOP. States that choose to operate an Exchange may also merge SHOP with the individual market Exchange.

We note that participation in a SHOP is strictly voluntary for small employers. Like the Exchange generally, the SHOP will improve access to information about plan benefits, quality, and premiums. It gives small businesses the types of choices and purchasing power that large businesses typically enjoy. Purchasing employer-sponsored coverage through the SHOP will also qualify certain small employers to receive a small business tax credit for

up to 50 percent of the employer's premium contributions toward employee coverage pursuant to section 45R of the Code. The requirements for the small business tax credit applicable for calendar years 2014 and beyond are not within the scope of this rule, but will be addressed in separate rulemaking by the Secretary of the Treasury.

a. Standards for the Establishment of a SHOP (§ 155.700)

In § 155.700, we propose that an Exchange must provide for the establishment of a SHOP that meets the requirements of this subpart, and is designed to assist qualified employers and facilitate the enrollment of qualified employees into qualified health plans.

b. Functions of a SHOP (§ 155.705)

In § 155.705, we propose the required functions of a SHOP. In paragraph (a), we propose that the SHOP must carry out all the required functions of an Exchange described in this subpart and in subparts C, E, H, and K of this part. As some of the requirements contained in those subparts are specific to the individual market, we propose the SHOP exceptions from those requirements in (a)(1) through (a)(5).

In paragraph (a)(1), we propose that the SHOP does not need to meet the requirements related to individual eligibility determinations described in § 155.200(c) and the appeals of such determinations described in § 155.200(d). In paragraph (a)(2) we clarify that the SHOP does not need to comply with the requirements related to enrollment of qualified individuals into QHPs, as described in subpart E. The enrollment requirements specific to SHOP are outlined in § 155.720 of this subpart.

In paragraph (a)(3), we propose that the SHOP does not need to include the calculator described in § 155.205(c) given that individuals eligible for affordable employer sponsored coverage are not eligible for advance payments of the premium tax credit. Because of the employee choice provisions of the Affordable Care Act, we encourage a SHOP to consider options to calculate and display the net employee contribution to the premium for different plans and different family compositions, after any employer contribution has been subtracted from the full premium amount. Because conveying net premium to the employee for coverage is current market practice and is important to informed employee choice, we encourage SHOPs to use this practice.

In paragraph (a)(4), we clarify that the SHOP does not need to certify exemptions from the individual coverage requirement as described in § 155.200(b), as the Exchange will fulfill this requirement. In paragraph (a)(5), we clarify that requirements related to the payment of premiums by individuals, Indian tribes, tribal organizations and urban Indian organizations under § 155.240 do not apply to the SHOP.

In paragraph (b), we propose unique functions of the SHOP. In paragraph (b)(1), we clarify that a SHOP must adhere to unique enrollment and eligibility requirements that are further described in §§ 155.710, 155.715, 155.720, 155.725, and 155.730. In addition, the SHOP must at a minimum facilitate the special enrollment periods described in § 156.285(b)(2). We note that in the context of a SHOP, a special enrollment period allows a qualified employee to join or change plans in certain circumstances during a period other than the employer's annual open enrollment period. In paragraph § 156.285(b)(2), we propose that all of the special enrollment periods that apply in the Exchange in connection with individual market coverage apply in the SHOP, with two exceptions:

(1) Because non-lawfully present individuals employed by a small business are not eligible for the SHOP, there would be no special enrollment period associated with becoming a new citizen, national, or lawfully present individual for the SHOP;

(2) There would be no special enrollment period in the SHOP to reflect a change in eligibility or new eligibility for advance payments of the premium tax credit or cost-sharing reductions since neither is available to qualified employees in the SHOP.

We recognize that other laws (including, but not limited to HIPAA (Pub.L. 104–191)) may require additional special enrollment periods and this proposed rule in no way eliminates those requirements. We also clarify that the two exceptions described above also apply to qualified employees in a SHOP with merged risk pools. We invite comment on special enrollment periods for the SHOP and how they might differ from those that would apply to the Exchange for the individual market.

In paragraph (b)(2) of this section, we propose to codify section 1312(a)(2) of the Affordable Care Act, which specifically provides that a qualified employer may choose a level of coverage under 1302(b), under which a qualified employee may choose an available plan at that level of coverage. We interpret the statute as requiring a SHOP to offer this specific consumer choice option to qualified employers and qualified employees.

In paragraph (b)(3), we provide flexibility for Exchanges and their SHOPs to choose additional ways for qualified employers to offer one or more plans to their employees. For example, an Exchange may (1) allow employees to choose any QHP offered in the SHOP at any level; (2) allow employers to select specific levels from which an employee may choose a QHP; (3) allow employers to select specific QHPs from different levels of coverage from which an employee may choose a QHP; or (4) allow employers to select a single QHP to offer employees. With respect to the fourth potential option, we believe that section 1312(f)(2)(B) of the Affordable Care Act may allow a qualified employer to select only a single QHP to make available to qualified employees. We welcome comments on the statutory interpretation of section 1312(a)(2)(A), which speaks to employer specification of a level of coverage and section 1312(f)(2)(B), which may permit a single QHP selection by an employer.

We note that allowing a qualified employee to purchase any plan across levels raises some potential for risk selection. A portion of any risk selection among plans and issuers due to employee choice of QHPs as defined in § 155.705(b)(2) may be mitigated through the risk adjustment program established pursuant to section 1343 of the Affordable Care Act. We also address this by only proposing a requirement for employee choice within a level of cost sharing, while providing SHOPs the option to offer broader employee choices among plans. We invite comment on this proposed flexibility.

A common practice in the small group market is the issuers' use of minimum participation rules, as defined in 42 U.S.C. 300gg–11(e)(2). The purpose of minimum participation rules is to protect the issuer against adverse selection related to healthy employees either remaining uninsured or obtaining coverage in the individual market. The first concern is mitigated by the coverage expansion provisions in the Affordable Care Act, and the second is mitigated by the market reform provisions of the Act. Nonetheless, there may still be advantages to establishing a minimum participation rule for participation in the SHOP. Methods for calculating the participation rate may vary across States. For example, in some States, carriers may exclude certain non-participating qualified employees from the calculation if they have certain types of coverage, such as Medicare,

Medicaid, or employer-sponsored health insurance obtained through a spouse. We invite comment about whether QHPs offered in the SHOP should be required to waive application of minimum participation rules at the level of the QHP or issuer; whether a minimum participation rule applied at the SHOP level is desirable; and if so, how the rate should be calculated, what the rate should be, and whether the minimum participation rate should be established in Federal regulation.

In paragraph (b)(4), we propose standards related to premium aggregation by the SHOP. To simplify the administration of health benefits among small employers, we propose that the SHOP allow qualified employers to receive a single monthly bill for all QHPs in which their employees are enrolled and to pay a single monthly amount to the SHOP. If this option were not available, a qualified employer may have to pay multiple bills from different QHP issuers each month. Therefore, we propose in paragraph (b)(4)(i) to require that the SHOP provide a monthly bill to a qualified employer that identifies the total premiums owed. We anticipate that most SHOPs will also include the employer and employee contribution for the QHP selected by each employee as a service to employers. Employers will have selected their contribution at the time of initial enrollment or renewal, and employees will have based their plan choices in part on the net cost of the QHPs they select. In paragraph (b)(4)(ii), we propose that the SHOP collect from employers offering multiple coverage options a single cumulative premium payment for all of a qualified employer's qualified employees enrolled through the employer in the SHOP. We note that the SHOP, itself, may aggregate these premium payments from employers and distribute these payments to the appropriate QHP issuers or contract with a third party to perform this function.

In paragraph (b)(5), we clarify that with respect to QHP certification, QHPs must meet the requirements described in § 156.285. As described further in subpart C of part 156, the minimum Federal certification criteria for health plans participating in the SHOP are nearly identical to the certification criteria for the Exchange. However, QHP certification criteria for the SHOP do not include adherence to requirements related to the administration of advance payments of the premium tax credit and cost-sharing reductions, which are specific to the Exchange for the individual market. Additionally, there are a few certification criteria that are specific to the SHOP, including:

- Health plan rate setting and premium payment standards for the SHOP,
- Enrollment period requirements for the SHOP, and
- Enrollment process requirements for the SHOP.

In paragraph (b)(6), we propose standards for rates and rate changes. In paragraph (b)(6)(i), we propose that the SHOP require all QHPs to make any change to rates at a uniform time that is either quarterly, monthly, or annually. As described in § 155.725, we propose to permit rolling enrollment in a SHOP, which allows qualified employers to purchase coverage in QHPs at any point during the year. Because employers will purchase coverage through the SHOP at different times during the year, employers will be subject to different rates based on the month or quarter during which they purchase coverage. Although QHPs may change rates during the year, those rates only apply to new coverage and to annual renewals. Additionally, such rate changes are still subject to rate increase consideration as described in § 155.1020. Paragraph (b)(6)(ii) proposes to require that the rate for a given employer not change during the employer's plan year. By providing uniform intervals for rate setting, SHOPs will experience less administrative burden and qualified employers and qualified employees will have more useful rate comparison information. We note that if an employee is hired during the plan year or changes coverage during the plan year during a special enrollment period, the rates set at the beginning of the plan year must be the rates quoted to the employee. We invite comment on whether we should allow a more permissive or restrictive timeframe than monthly, quarterly, or annually. We also invite comment on what rates should be used to determine premiums during the plan year.

In paragraph (b)(7), we propose that if a State merges the individual and small group risk pools, the Exchange may only offer employers and employees QHPs that meet the SHOP requirements for QHPs, such as the deductible maximums described in section 1302(c) of the Affordable Care Act and the employer choice requirements described in § 155.705(b)(2) of the Affordable Care Act. QHPs sold in a merged market must still meet the general standards defined in § 156.20. Similarly, employee choices among QHPs within and across levels may be limited or expanded by policies of the Exchange or by choices made by the employer.

In paragraph (b)(8), we propose that if a State does not merge the individual and small group risk pools described in (b)(7), a SHOP may only make small group QHPs available to qualified employees. We note that if risk pools are not merged, allowing those in the SHOP to purchase health plans outside of the small group risk pool could result in adverse selection.

In paragraph (b)(9), we propose to codify section 1312(f)(2)(B) of the Affordable Care Act, which permits States to allow insurers in the large group market to offer health plans inside of the SHOP beginning in 2017. In States that elect this option, large employers could make an employee eligible for the SHOP if it provides all full-time employees with the opportunity to enter the SHOP. Section 2794(b)(2)(B) of the PHS Act requires the State to consider excess premium growth outside of the SHOP when considering whether to allow large employers to purchase coverage inside of the SHOP.

c. Eligibility Standards for SHOP (§ 155.710)

In § 155.710, we propose the eligibility standards for qualified employers and qualified employees seeking to purchase coverage through a SHOP. In paragraph (a), we propose to codify section 1311(d)(2) of the Affordable Care Act, which specifies that the SHOP make QHPs available to qualified employers. Paragraph (b) describes the eligibility criteria for qualified employers. We limit the scope of these standards to maximize the accessibility of the SHOP, streamline the enrollment process, and to minimize the burden on employers and employees.

In paragraph (b)(1), we propose that the SHOP ensure that an entity is a small employer. Specifically, the employer must employ no more than 100 employees, with the exception that a State may elect to limit enrollment in the small group market to employers with no more than 50 employees until January 1, 2016.

Section 1304 of the Affordable Care Act defines the calculation of an employer's size based upon the average number of employees employed on business days during the preceding calendar year. The terms ''employer,'' ''small employer,'' and ''large employer'' are defined in § 155.20, and are based on the definitions from the PHS Act. The PHS Act determines employer size by counting all employees, including part-time and seasonal employees, to determine an employer's size. Part-time workers

would be counted in the same manner as full-time workers, while seasonal employees would be counted proportionately to the number of days they work in a year, as discussed in more detail later in this preamble. The PHS Act is in turn consistent with the definition of an employee in section 3(6) of ERISA. Because the PHS Act definition of employer and ERISA definition of group health plan refer to at least 1 employee, they exclude sole proprietors, certain owners of S corporations, and certain relatives of each of the above. The definition of ''employer'' in § 155.20 also requires that all persons treated as a single employer under subsections (b), (c), (m) or (o) of section 414 of the Code must be treated as one employer when determining employer size. We note that States use a variety of methods to determine employer size with regard to eligibility for participation in the small group market, and that these State methods may, in turn, add a level of specificity not described in this method of determining employer size. We solicit comment on this approach.

In paragraph (b)(2), pursuant to section 1312(f)(2)(A) of the Affordable Care Act, we propose to codify the requirement that the SHOP ensure a qualified employer provides an offer of coverage through a SHOP to all full-time employees. In paragraph (b)(3), we propose that the employer can elect to cover all employees through the SHOP serving the employer's principal business address. An employer with worksites in different SHOP service areas can elect to offer each eligible employee coverage through the SHOP serving the employee's primary worksite.

In paragraph (c), we propose to require a SHOP to accept the application of an employer to provide coverage to eligible employees whose worksite is in the SHOP service area, if the employer elects to cover all employees through the SHOPs serving their worksites. This standard provides qualified employers with the flexibility to cover qualified employees in areas in which such employees work, and provides those employees with access to local QHPs that may best meet their needs. If a qualified employer opts to provide coverage through SHOPs in different service areas, SHOPs could establish a participation rule with respect to the number of employees employed by the employer within the service area of the SHOP.

In paragraph (d), we propose to codify section 1304(b)(4)(D) of the Affordable Care Act which allows an employer participating in the SHOP to continue participating in the SHOP if the number of workers employed exceeds the level specified by the definition of a qualified employer after the employer's initial eligibility determination. This provision seeks to minimize potential disruption to qualified employees who work for growing employers. However, this provision would not apply to an employer that otherwise fails to meet the eligibility criteria for participation in the SHOP.

In paragraph (e), we propose eligibility criteria for a qualified employee. Only employees that receive an offer of coverage through the SHOP from a qualified employer may be a qualified employee.

d. Eligibility Determination Process for SHOP (§ 155.715)

In paragraph (a), we propose the eligibility determination process for employers seeking to offer qualified employees health coverage through a SHOP. We propose that a SHOP determine eligibility consistent with the standards described in § 155.710. For both employers and employees, the information proposed to be collected is limited to the minimum information needed to determine eligibility to participate in the SHOP. One way for SHOPs to determine the size of the employer is to allow employers to self-report the size of its workforce and attest to the report's accuracy; however, SHOPs are permitted to require a more stringent determination of employer size and may require other information.

In addition to verifying the size of an employer, we propose that a SHOP must verify that a qualified employer has fulfilled all of the standards specified in § 155.710, including offering all full-time employees access to health coverage through the SHOP, as well as verifying that at least one employee employed by the employer works in the SHOP's service area. We believe that a self-reported address and an attestation by the employer that it is offering coverage should be considered sufficient for verification purposes.

In paragraph (b), we propose that the SHOP use only two application forms: one for qualified employers and one for qualified employees; this is based on our interpretation of section 1413(b)(1)(A), which requires that the Secretary develop and provide to each State a single, streamlined form, and section 1311(c)(1)(F), which provides that an issuer shall use a uniform enrollment form for qualified individuals and employers to enroll in QHPs through the Exchange.

In paragraph (c), we propose that for the purpose of determining eligibility in the SHOP, the SHOP may use the information attested to by the employer or employee on the applicable application. However, the SHOP must, at a minimum, verify that an individual attempting to enter the SHOP as an employee is listed on the qualified employer's roster of employees to whom coverage is offered. Additionally, the SHOP may deny applications for which, through its verification process, it has reason to doubt the veracity of the information provided by the applicant. A SHOP may establish additional methods to verify information beyond reliance on the single employer application and the single employee application. Methods of additional verification that may lead to instances in which a SHOP may have a reason to doubt information provided by employers or employees include, but are not limited to: (1) Review of quarterly wage reports suggesting the employer does not meet the State's definition of a small employer; and (2) attempts by an employer to enroll a number of employees that is greater than allowed under the State's definition of small employer, contrary to attestations made on the application. Appeals related to this process will be addressed in future rulemaking.

In paragraph (d), we propose that the SHOP have processes to resolve occasions when the SHOP has a reason to doubt the information provided through the employer and employee applications. In such cases, the employer or employee must be notified by the SHOP. Further, the SHOP must make a reasonable effort to identify and address the cause of the doubt; contact the employee or employer to confirm the accuracy of relevant information and provide the employee or employer with a 30-day period to correct the possible error. At the end of this period, the SHOP must notify the employee or employer of its eligibility determination and in the case of the employer, if the employer was enrolled in a plan before the completion of this verification process, discontinue the employer's participation in the SHOP (and the enrollment of any employees of that employer) at the end of the month following the month in which the notice was sent.

In paragraph (e), we propose that the SHOP notify an employer of the SHOP's eligibility determination and the employer's right to appeal. In paragraph (f) we propose that the SHOP notify an employee of the SHOP's eligibility determination and the employee's right to appeal.

In paragraph (g), we propose that if a qualified employer ceases to purchase

any coverage through the SHOP, the SHOP must ensure that: (1) Each QHP terminates the coverage of the employer's qualified employees enrolled in QHPs through the SHOP; and (2) each of the employer's qualified employees enrolled in a QHP through the SHOP is notified of the employer's withdrawal and their termination of coverage prior to such withdrawal and termination. We are considering whether this notice must inform the employee about his or her eligibility for special enrollment periods in the Exchange and about the process of being determined eligible for advance payments of the premium tax credit and cost-sharing reductions, Medicaid and CHIP. We solicit comments regarding this eligibility and notification process.

e. Enrollment of Employees into QHPs Under SHOP (§ 155.720)

In § 155.720 we address enrollment of employees into QHPs under SHOPs. In paragraph (a), we propose a general standard that the SHOP must process applications for enrollment from employees and facilitate enrollment of qualified employees into QHPs.

In paragraph (b), we propose that the SHOP establish a uniform enrollment timeline and process to be followed by all employers and QHPs in the SHOP. Such timeline is for the following activities: (1) Determination of employer eligibility to purchase coverage in the SHOP as described in § 155.715; (2) qualified employer selection of QHPs offered through the SHOP to qualified employees, consistent with § 155.705(b)(2) and (3); (3) provision of a specific timeframe during which qualified employers may select the level of coverage or QHP offering, as appropriate; (4) provision of a specific timeframe for qualified employees to complete the employee application process; (5) determination and verification of employee eligibility for enrollment through the SHOP; (6) enrollment processing of qualified employees into selected QHPs; and (7) establishment of effective dates of qualified employee coverage. We note that, pursuant to the rolling enrollment requirements of § 155.725(b), the timeframe for these activities should be standardized relative to a plan year as opposed to a calendar year; while the enrollment dates qualified for employers will differ depending on when they join, the period they have to complete the steps along this process will be consistent among all employers. Ultimately, we believe that to provide a competitive shopping experience for qualified employees, it is important to have similar enrollment processes across QHPs, so qualified employees are not excluded from some QHPs due to inconsistent timing requirements.

In paragraph (c), we propose that the SHOP must process applications in accordance with the timeline described in paragraph (b) and adhere to the requirements specified in § 155.400(b) regarding relevant standards for enrollment and timing of data exchange between the SHOP and QHPs. In paragraph (d), we propose that the SHOP must adhere to standards set forth in § 155.705(b)(4) regarding payment administration.

In paragraph (e), we propose that the SHOP must ensure that qualified employees who select a QHP are notified of the effective date of coverage. The SHOP may require QHPs to officially make such notice, but we propose to make the SHOP responsible for ensuring that such notification occurs.

In paragraphs (f) and (g), we address maintenance of enrollment records and reconciliation of enrollment information with QHPs. We propose that information maintained must include records of qualified employer participation and qualified employee enrollment in the SHOP. Such information must also be reported to HHS, consistent with the standards of § 155.400(d). We propose that reconciliation of enrollment information with QHPs occur at least monthly. We provide SHOPs with discretion to conduct enrollment reconciliation processes on a more frequent basis, depending upon the technical capabilities of the SHOP and participating QHPs. We welcome comments about whether we should establish target dates or guidelines so that multi-State qualified employers are subject to consistent rules.

In paragraph (h), we propose that if a qualified employee voluntarily terminates coverage from a QHP, the SHOP must notify the individual's employer. This ensures that the employer has the proper information for administration of the benefits provided to its employees and the payment for those benefits. Terminations by qualified employees will also be subject to requirements and limitations identified in other laws and the employer's plan; for example, cafeteria plan restrictions on mid-year changes based on the Code will remain applicable.

f. Enrollment Periods Under SHOP (§ 155.725)

In § 155.725, we address enrollment periods under SHOPs consistent with section 1311(c)(6) of the Affordable Care Act. In paragraph (a), we propose that the SHOP: (1) Adhere to the start of the initial open enrollment period for the Exchange; and (2) ensure that enrollment transactions are sent to QHP issuers and that such issuers adhere to coverage effective dates in accordance with § 156.260. We propose that the initial open enrollment for the SHOP begins on October 1, 2013 for coverage effective January 1, 2014, which is the same as the Exchange serving the individual market. However, unlike the initial open enrollment period that closes after a certain date, in the SHOP, the initial open enrollment date represents the starting point for which qualified employers may begin participating in the SHOP.

In paragraph (b), we propose a rolling enrollment process in the SHOP whereby qualified employers may begin participating in the SHOP at any time during the year. We are proposing a rolling enrollment process for the SHOP to match the enrollment process for the small group market outside of the SHOP. We believe that qualified employers will only join the SHOP if it is convenient to do so. Further, employers may be less likely to choose coverage through the SHOP if they can only enroll in the SHOP during a single annual open enrollment period.

We clarify that while a qualified employer may enter the SHOP at any time, the qualified employees will only be able to enroll or change plans (to the extent multiple QHPs are available) once a year unless such employees qualify for a special enrollment period. Additionally, we note that, consistent with current market practice, an employer's plan year may not necessarily align with the calendar year. Instead, plan years inside the SHOP must consist of the twelve-month period beginning with the employer's effective date of coverage. This is different from the open enrollment period for the individual market, where a full plan year will always begin on January 1 and terminate on December 31. We invite comments on these provisions.

In paragraph (c), we propose an annual employer election period in advance of the annual open enrollment period, during which time a qualified employer may, among other things, modify the employer contribution towards the premium cost of coverage and plan offerings. To ensure timely renewal, the qualified employer must work within the confines of the uniform enrollment timeline established by the SHOP and described in § 155.720(b) to make such changes. This requires the employer to make its election before the conclusion of its current plan year and

before the annual employee enrollment period for the following plan year. Because of rolling enrollment and the non-alignment of plan years and calendar years in the SHOP, this annual election period may be specific to each qualified employer and therefore must occur at a fixed point in the plan year, for example two months before its completion, and not at a fixed point in the calendar year.

In paragraph (d), we propose that the SHOP must notify participating employers that their annual election period is approaching. We are considering whether to require the participating employer receive 30 days advance notice that the election period is approaching. During this time, the participating employer will have the time to compare the options available and can then make any changes during the election period. We solicit comment on this notice requirement.

In paragraph (e), we propose to require the SHOP to establish an annual employee open enrollment period for qualified employees. We note that if the SHOP were to allow a qualified employer to offer only one plan to its employees, a qualified employee will not be able to change plans during the annual open enrollment period, but could still change who is enrolled by adding and dropping dependents. As previously stated, small group markets are unique and we believe that the annual employee open enrollment period should be established by the SHOP in order to accommodate the markets that it serves. Such period must occur prior to the completion of the employer's plan year and after the employer's annual election period. Similar to the annual employer election period, because of rolling enrollment in the SHOP, the annual employee enrollment period should occur at a fixed point in the plan year and not at a fixed point in the calendar year. We solicit comment on this provision.

In paragraph (f), we propose that the SHOP ensure a qualified employee who is hired outside of the initial or annual open enrollment period would have a specified window set by the SHOP to seek coverage in a QHP beginning on the first day of employment. Much like the Federal Employees Health Benefit program (which has a 60-day window), the coverage for such an employee would continue through the qualified employer's plan year. At the time of the annual open enrollment period, the employee would have the option to renew or change coverage on a similar basis as the other employees of that qualified employer covered through the SHOP. We solicit comments on these proposed notices and their interaction with existing law and regulation.

In paragraph (g), we propose that the SHOP establish effective dates of coverage for qualified employees. In paragraph (h), we propose that if an enrollee remains eligible for coverage in a QHP through the SHOP, such individual will remain in the QHP selected during the previous plan year with limited exceptions. Exceptions would include: (1) Employee termination of coverage in accordance with the standards of § 155.430 for the individual market: (2) enrollment in another QHP if such option exists: or, (3) the qualified health plan in which the enrollee was enrolled is no longer available to the enrollee. In all such cases, an individual would be disenrolled from the QHP in which he or she was enrolled at the end of the coverage year.

We welcome comments about our approach in differentiating the individual and small group market enrollment as well as specific comments concerning the proposed structure for initial, rolling, and annual open enrollment through the SHOP.

g. Application Standards for SHOP (§ 155.730)

Section 155.730 outlines the specific application-related standards for participation in the SHOP, consistent with the authority under section 1311(b)(1)(B) of the Affordable Care Act. In paragraph (a), we propose a general requirement that SHOP applications must adhere to the application standards set forth in this section. Many of the standards in this section are quite similar to the standards of § 155.405 and in places we directly reference those standards. However, we do not require that the SHOP use the same, single streamlined application as the Exchange uses in the individual market, as the SHOP is not responsible for determining eligibility for advance payments of the premium tax credit, cost-sharing reductions, Medicaid or CHIP.

In paragraph (b), we propose that the SHOP use a single employer application to determine employer eligibility and to collect the information necessary for the employer to purchase coverage through the SHOP. We also propose the minimum employer information that SHOPs must collect on the single employer application. This information includes (1) the employer name and address of employer's; (2) number of employees; (3) Employer Identification Number (EIN); and (4) a list of qualified employees and their social security numbers. Such application may be submitted by other individuals or organizations on behalf of the employer. We welcome comments regarding other employer information we should consider requiring a SHOP to collect.

In paragraph (c), we propose that the SHOP must use a single employee application for each employee to collect eligibility and QHP selection and enrollment information from employees seeking to enroll in a QHP. The amount of information that will be collected about employees will be significantly less than that which is collected for applicants to the individual Exchange making the wholesale reuse of the individual application burdensome. However the single, streamlined application completed by an individual seeking to enroll in the individual market may be modified and reduced to meet the needs of an employee in the SHOP. A SHOP applicant applying online should only be asked questions relevant to an employee application. Similarly, an employee applying through the paper application should receive a paper application containing only the portion relevant to eligibility and enrollment of a qualified employee in the SHOP. Using the same application foundation for employees and individuals will further streamline processes of developing applications and information sharing among the individual Exchange, SHOP, QHP issuers, and HHS. Such application may be submitted by other individuals or organizations on behalf of the employee.

In paragraph (d), we specify that SHOPs may use a model single employer application and model single employee application created by HHS. Model applications will be proposed by HHS, after consultation with the NAIC. This process mirrors the standards in the Exchange serving the individual market. In paragraph (e), we permit a SHOP to use an alternative employer application with approval by HHS. Such application should support the information described in paragraph (b) and information relevant to determine eligibility for the programs for which the employer is applying and plan selection, where relevant. The SHOP may also use an alternative employee application, the approval by HHS. Such application requests the information necessary to establish eligibility of the employee as a qualified employee and to complete the enrollment of a qualified employee, such as a plan selection and identification of dependents to be enrolled.

In paragraph (f), we propose that the SHOP must allow employers and employees to submit their eligibility and enrollment information consistent with § 155.405(c).

6. Subpart K—Exchange Functions: Certification of Qualified Health Plans

This subpart codifies section 1311(d)(4)(A) of the Affordable Care Act, which requires that Exchanges, at a minimum, implement procedures for the certification, recertification, and decertification of health plans as QHPs, consistent with guidelines developed by HHS. This subpart also distinguishes the Exchanges' responsibility related to the inclusion in the Exchange of certain multi-State plans. Standards for health insurance issuers with respect to QHP certification are contained in subpart C of part 156 of this regulation, and we cross-reference those standards where applicable in this subpart.

When developing this subpart, we considered comments to the RFC recommending that Exchange certification of QHPs be structured in one of two ways: Establish QHP certification standards that would be uniform across Exchanges, or provide each Exchange the discretion to determine certification standards and whether or not a health plan should be certified. While we recognize the importance of setting consistent consumer protections which may ensure equitable treatment across States, we also acknowledge that an Exchange may be best positioned to identify whether a particular health plan should be certified as a QHP based on the needs of consumers within the State and local market conditions. In this subpart, we seek to strike a balance between the approaches suggested by RFC commenters. In some cases, we propose setting specific requirements to ensure QHPs in all Exchanges meet a consistent minimum standard of quality and value, and in other instances, we propose allowing each Exchange the discretion to set standards for QHPs tailored to local market conditions.

a. Certification Standards for QHPs (§ 155.1000)

In § 155.1000, we describe the overall responsibility and requirements of an Exchange to certify QHPs, and to ensure that only QHPs are offered. In paragraph (a), we define a multi-State plan. Section 1334(a) of the Affordable Care Act establishes multi-State plans; the Office of Personnel Management (OPM) will enter into contracts with health insurance issuers to offer at least two multi-State QHPs through each Exchange in each State. Section 1334(c)(1) of the Affordable Care Act further specifies that multi-State QHP requirements are satisfied if the OPM Director determines the plan offers a benefits package that is uniform in each State and consists of the benefit design standards described in section 1302, meets all requirements for QHPs, and meets Federal rating requirements pursuant to section 2701 of the PHS Act, or a State's more restrictive rating requirements, if applicable.

In paragraph (b), we propose to codify section 1311(d)(2)(B)(i) of the Affordable Care Act, which requires that an Exchange may not make available any health plan that is not a QHP. Offering only QHPs through an Exchange will assure consumers that the coverage options presented through the Exchange meet minimum standards. Also, consistent with the definition of QHP in § 155.20, we propose to codify section 1301(a)(1)(A) of the Affordable Care Act, in which QHPs must have in effect a certification issued or recognized by the Exchange as QHPs. Finally, we propose to codify section 1301(a)(2) of the Affordable Care Act, which requires any reference to QHPs to include the multi-State plans, unless specifically provided for otherwise.

In paragraph (c), we propose to codify the two basic sets of requirements that an Exchange must ensure that a health plan meets to be certified as a QHP issuer by an Exchange pursuant to section 1311(e) of the Affordable Care Act. In paragraph (c)(1), we propose to codify section 1311(c)(1) of the Affordable Care Act, which provides for the minimum QHP certification requirements to be applied by an Exchange; these requirements are outlined in subpart C of part 156. In developing a process to certify QHPs, the Exchange should identify those standards from subpart C of part 156 with which a health insurance issuer should demonstrate compliance as a condition of certification of QHPs, as well as those standards with which a health insurance issuer should agree to comply as an ongoing condition of offering QHPs.

In paragraph (c)(2), we propose to codify section 1311(e)(1)(B) of the Affordable Care Act, which allows an Exchange to certify a health plan if it determines it is in the interest of qualified individuals and qualified employers in the State. We received RFC comments regarding the extent to which Exchanges should implement an ''any-willing plan'' model, or implement active purchasing approaches, such as selective contracting or price negotiation. Some commenters argued that active purchasing approaches would minimize costs, improve health outcomes, and increase enrollment and coordination with other programs. Of these comments, many recommended that at a minimum, HHS should not require the Exchanges to accept all eligible plans. In contrast, advocates of the any-willing plan approach noted that State insurance departments already review and approve rates and regulate insurer solvency, and that negotiation would result in de facto premium price controls for the entire market, reduce consumer choice and competition, and result in duplicative regulatory structures.

We provide Exchanges with discretion on how to determine whether offering health plans is in the interest of individuals and employers. An Exchange may want to choose among one of several strategies for making this determination. An Exchange may choose to utilize an ''any qualified plan'' strategy for certifying QHPs in its Exchange. Under this approach, an Exchange would certify all health plans as QHPs solely on the basis that such plans meet and agree to comply with the minimum certification requirements in paragraph (c)(1) of this section.

Alternatively, an Exchange could undertake a competitive bidding or selective contracting process, and limit QHP participation to only those plans that ranked highest in terms of certain Exchange criteria. With competitive bidding, an Exchange may be able to achieve additional value and quality objectives by limiting participation and through plan competition. Since many State Medicaid programs employ selective contracting models today and have experience negotiating with health insurance issuers on Medicaid managed care plans, some State Exchanges may want to pursue similar competitive strategies when certifying QHPs.

An Exchange may also choose to negotiate with health insurance issuers on a case-by-case basis. Under this strategy, the Exchange would request a health insurance issuer, upon meeting the minimum certification standards, to amend one or more specific health plan offerings to further the interest of qualified individuals and qualified employers served by the Exchange. Unlike the previous options, the Exchange would not need to undertake a competitive bidding process to accomplish this negotiation. Rather, it could choose to negotiate with issuers on certain criteria based on the unique market conditions within the State or region served by that same Exchange.

An Exchange may also implement selection criteria beyond the minimum certification standards in determining whether a plan is in the interests of the qualified individuals and employers. Some examples of such selection criteria include: (1) Reasonableness of the estimated costs supporting the

calculation of the health plan's premium and cost-sharing levels; (2) past performance of the health insurance issuer; (3) quality improvement activities; (4) enhancements of provider networks including the availability of network providers to new patients; (5) service area of the QHPs (the size of a service area and the amount of choice afforded to the consumers within that service area); and (6) premium rate increases from years preceding the Exchange operation and proposed rate increases, consistent with § 155.1020.

Some of these approaches are not mutually exclusive and may be implemented in combination. How an Exchange elects to implement the ''interest'' determination may vary based upon a number of factors, including the size and risk profile of the Exchange's potential enrollees, concentration of the health insurance market in the area served by the Exchange, and the applicable State insurance rules. Each Exchange will likely need to assess these factors in selecting an approach that will promote value and quality for its enrollees.

In paragraph (c)(2) we propose to codify section 1311(e)(1)(B) of the Affordable Care Act, which outlines the prohibitions on the Exchange when it is making the determination that a health plan is in the interest of qualified individuals and qualified employers. Under this authority, an Exchange is prohibited from excluding a plan: (1) On the basis that the plan is a fee-for-service plan; (2) through the imposition of premium price controls; or (3) on the basis that the health plan provides treatments necessary to prevent patients' deaths in circumstances the Exchange determines are inappropriate or too costly.

b. Certification Process for QHPs (§ 155.1010)

In § 155.1010, we propose the required process that Exchanges must use when certifying health plans, and identify which health plans are not subject to Exchange certification. Specifically, in paragraph (a) we propose to codify section 1311(d)(4)(A) of the Affordable Care Act, which requires the Exchange to establish procedures for the certification of QHPs. We further propose that the procedures must be consistent with the certification criteria outlined in § 155.1000(c).

In paragraph (b), we propose to codify section 1334(d) of the Affordable Care Act which requires a multi-State plan offered through OPM to be deemed as certified by an Exchange for the purposes of section 1311(d)(4)(A). We note that, pursuant to section 1334(c)(1)(B), multi-State plans will need to meet all the requirements of a QHP, as determined by OPM. We believe that the intent of the statute is that each Exchange must accept multi-State plans as QHPs without applying an additional certification process to such plans. In paragraph (c), we propose that the Exchange complete the certification of QHPs prior to the open enrollment periods established in § 155.410. We believe this is necessary to ensure that consumers will have a robust market from which to select QHPs when the open enrollment period begins.

In paragraph (d), we propose that the Exchange must monitor the QHP issuers for demonstration of ongoing compliance with the certification requirements in § 155.1000(c). If the QHP issuers or their QHPs cease to demonstrate ongoing compliance, the Exchange may be inclined to seek actions against the issuers or try to remedy the situation.

c. QHP Issuer Rate and Benefit Information (§ 155.1020)

Section 1311(e)(2) of the Affordable Care Act establishes standards on Exchanges regarding the transparency of justifications for rate increases submitted by QHP issuers. In accordance with this section, in paragraph (a) of § 155.1020, we propose that Exchanges must receive a QHP issuer's justification for a rate increase prior to the implementation of such an increase, and ensure that the QHP issuer posts the justification on its Web site. We recognize that QHP issuers may already submit rate increase justifications as part of the rate review process, and note that an Exchange may receive this information from the State department of insurance (or HHS, if applicable), to satisfy its obligation to receive such a justification.

Section 1311(e)(2) of the Affordable Care Act also requires an Exchange to consider rate increases in determining whether to make a health plan available on the Exchange. Several comments in response to the RFC recommended a range of purposes for the Exchange consideration of rate increases, including adequacy of claims payment, reasonableness for benefits offered based upon actuarial analysis, discriminatory practices, and unsupported excessive rate increases. Other comments noted the interaction between the State rate review process and Exchange review of premiums for QHP certification purposes. Finally, some commenters recommended transparency in review of rate justifications as well as consistent criteria of ''reasonableness'' of increases inside and outside Exchanges.

In paragraph (b) we propose to codify the statutory requirement that an Exchange must consider the following factors related to health plan rates when determining whether to certify QHPs: (1) The justification of a rate increase prior to the implementation of the increase; (2) the recommendations provided to the Exchange by the State under section 2794(b)(1)(B) of the PHS Act; and (3) any excess rate growth outside the Exchange as compared to the rate of growth inside the Exchange, including information reported by the States. We clarify that the obligation to consider rate increases justifications is an ongoing requirement, beginning with the plan year 2014.

We seek to avoid duplicating the State rate review process in section 2794 of the PHS Act. We recognize that many States already operate an effective rate review program, collect information from issuers in the rate filing process and make a determination if the rate complies with State law. This process, when available, should be leveraged by the Exchange to avoid any duplication. For example, Exchanges may consider the preliminary justification already collected through the rate review process, and use the same format for the rate justification from health plans issuers under § 154.215. Establishing consistency between the rate justification described in § 154.215 and the justification required from QHP issuers by § 156.210 would reduce duplication of effort for issuers and Exchanges and promote greater transparency.

We are considering a standard for the final rule in which there would be a bifurcated process for the rate increase justifications. Where section 2794 of the PHS Act applies (rates are subject to review), the Exchange may rely on the justification submitted pursuant to section 2794 of the PHS Act. Where section 2794 of the PHS Act does not apply, the Exchange could develop a less burdensome rate justification to satisfy section 1311(e)(2) of the Affordable Care Act. We are cognizant of existing State regulatory authorities; thus, we encourage the Exchange and the State department of insurance to collaborate in this process. Collaboration may include determining the form, manner, and timing of the submission of the rate justifications. We solicit comment on how to best align section 2794 of the PHS Act and section 1311(e)(2) of the Affordable Care Act.

Separate and apart from the consideration of a rate increase

justification, Exchanges will need to receive rate and benefit information from QHP issuers for specific operational purposes. In paragraph (c) of § 155.1020, we propose that the Exchange must at least annually receive the following information from the QHP issuers' for each QHP: Rates, covered benefits and cost-sharing requirements. HHS will provide the form and manner for the submission of this information. We note that the Exchange will need to receive rate information from QHP issuers in order to determine premium amounts for Exchange applicants as well as for the determination of the second lowest cost silver plan benchmark for advance payments of the premium tax credit. Additionally, benefit information is needed to determine whether a QHP complies with the benefit design standards defined in § 156.20 and with the actuarial value requirements for cost-sharing reductions as well as to display plan options on the Exchange Web site. Furthermore, rate information is needed to support HHS' administration of the risk corridor program.

In establishing the required rate and benefit data elements, HHS will seek to align this reporting requirement with information available through the State rate review process or through State rate filings, to the extent possible, so that an Exchange may consider leveraging already available sources.

d. Transparency in Coverage (§ 155.1040)

In § 155.1040, we propose to codify section 1311(e)(3) of the Affordable Care Act, which establishes that Exchanges must require health plans seeking certification as QHPs to submit transparency information to the Exchange, HHS, and other entities. In paragraph (a), we require Exchanges to collect information from QHP issuers relating to coverage transparency as described in § 156.220(a).

While the transparency reporting requirements in § 156.220 apply specifically to QHPs, we note that these same requirements will also apply to all group health plans and health insurance issuers in the individual and group markets under section 2715A of the PHS Act as amended by the Affordable Care Act. As section 2715A of the PHS Act is implemented, we anticipate working closely with the Department of Labor and the Department of the Treasury in order to ensure that these reporting standards are applied appropriately across the insurance market. In addition, HHS is soliciting comments under this proposed rule as part of the process of planning for the implementation of section 1311(e)(3)(D) of the Affordable Care Act. Any comments received related to section 1311(e)(3)(D) will be shared with the Department of Labor so that it can update and harmonize its rules for group health plan disclosures.

In paragraph (b), we require the Exchange to monitor the use of plain language by QHP issuers when making available QHP transparency data pursuant to § 156.220. Section 1311(e)(3)(B) requires the Secretary of HHS and the Secretary of Labor to jointly develop and issue guidance on best practices of plain language writing. Exchanges will need to ensure that QHP issuers' use of plain language is consistent with the definition provided in § 155.20 and the guidance set forth as required by section 1311(e)(3)(B).

In paragraph (c), we propose to codify section 1311(e)(3)(C) of the Affordable Care Act which specifies that the Exchange require QHP issuers make available cost-sharing information to enrollees. This requirement on QHP issuers is described in § 156.220(c).

We note that the information provided by QHP issuers pursuant to this section may be used by Exchanges during the certification process when determining if the health plan is in the interest of the qualified individuals served by the Exchange. Information reported under this section may inform Exchanges when considering the past performance of the health insurance issuers.

e. Accreditation Timeline (§ 155.1045)

In § 155.1045, we propose to codify the Exchange responsibility, required by section 1311(c)(1)(D)(ii) of the Affordable Care Act, to establish the time period within which any QHP issuer that is not already accredited must become accredited following certification of a QHP. Accreditation acts as a ''seal of approval'' to indicate to individuals and employers seeking coverage that a health insurance issuer meets minimum standards of quality and consumer protection. We note that, although section 1311(c)(1)(D)(i) of the Affordable Care Act requires a health plan to be accredited to be certified as a QHP, we interpret this to mean that QHP issuers must be accredited, because accrediting entities accredit issuers, not plans. In § 156.275, we propose that all QHP issuers must be accredited with respect to their QHPs.

The Affordable Care Act does not set the deadline by which a health insurance issuer must be accredited to have a health plan certified as a QHP, nor does it establish a time period after certification of a QHP during which a QHP issuer must become accredited if it is not already accredited. A grace period may be necessary since a typical accreditation process for a health insurance issuer may take twelve to eighteen months to complete, and could be even longer for health insurance issuers seeking accreditation for the first time. We encourage the Exchanges to establish a timeline for accreditation that accommodates the length of the accreditation process, particularly for issuers seeking first-time accreditation.

We propose to require the Exchange to establish the length of time following initial certification of a QHP within which a QHP issuer must become accredited. The Exchange must establish a consistent deadline for accreditation with respect to each QHP issuer's initial participation in the Exchange; the deadline, for example, may be two years following certification of a QHP. This proposal is consistent with section 1311(c)(1)(D)(ii) of the Affordable Care Act which specifies that the time period established by the Exchange must be ''applicable to all QHPs.'' We believe this interpretation, as opposed to a single date by which all QHP issuers must be accredited in order to participate or continue participating in the Exchange, will allow for inclusion of a wider variety of QHP issuers in the Exchange.

f. Establishment of Exchange Network Adequacy Standards (§ 155.1050)

The Exchanges will make health insurance available to a variety of consumers, including those who reside or work in rural or urban areas where it may be challenging to access health care providers. Network adequacy requirements will help ensure that QHP enrollees can readily obtain services. Under section 1311(c)(1)(B) of the Affordable Care Act, HHS is required to establish network adequacy requirements for health insurance issuers seeking certification of QHPs.

We recognize that network adequacy standards should be appropriate to States' particular geography, demographics, local patterns of care, and market conditions. Therefore, to ensure that Exchange network adequacy requirements are appropriate for QHP issuers and reflect local patterns of care, we propose in § 155.1050 that each Exchange ensure that enrollees of QHPs have a sufficient choice of providers. This broad standard affords the Exchange significant flexibility to apply this standard to QHPs in a manner appropriate to the State's existing patterns of care, establishing specific standards where necessary and leveraging existing State oversight and

enforcement mechanisms in this area. We propose at § 156.230 that QHP issuers adhere to standards set by the Exchange, as well as several statutorily required standards that would apply to all QHP issuers.

We solicit comment on additional minimum qualitative or quantitative standards for the Exchange to use in evaluating whether the QHP provider networks provide sufficient access to care. When considering our options for establishing network adequacy standards for QHP issuers, we examined typical standards employed in the existing insurance market by State departments of insurance, Medicare Advantage, TRICARE Prime and States that contract with Medicaid managed care organizations. We also examined the NAIC Managed Care Plan Network Adequacy Model Act, from which a number of States have drawn in developing their network adequacy standards for health insurance issuers. We have sought to develop a standard that balances the need for a uniform level of protection with the level of variation across States and local markets.

In particular, we seek comment on a potential additional requirement that the Exchange establish specific standards under which QHP issuers would be required to maintain the following: (1) Sufficient numbers and types of providers to assure that services are accessible without unreasonable delay; (2) arrangements to ensure a reasonable proximity of participating providers to the residence or workplace of enrollees, including a reasonable proximity and accessibility of providers accepting new patients; (3) an ongoing monitoring process to ensure sufficiency of the network for enrollees; and (4) a process to ensure that an enrollee can obtain a covered benefit from an out-of-network provider at no additional cost if no network provider is accessible for that benefit in a timely manner. These standards are based in part on the NAIC Managed Care Plan Network Adequacy Model Act. This set of standards would create a baseline that each Exchange could interpret and apply in a manner appropriate to local market conditions and patterns of care. Consistent with these basic standards, an Exchange would be able to set quantitative requirements where possible to establish clear expectations of access to care.

We also seek comment on an additional standard that the Exchange ensure that QHPs' provider networks provide sufficient access to care for *all* enrollees, including those in medically underserved areas. Such a requirement would protect against a network design that does not serve all enrollees' medical needs.

The standard proposed here would allow an Exchange to set standards appropriate to local patterns of care. We urge the Exchanges to consider the needs of enrollees in isolated geographic areas in particular; for example, an Exchange may want to consider the needs of American Indians and Alaska Natives residing in remote locations, given that they may often have a limited choice of providers from which to select. We also clarify that a QHP issuer's provider network must ensure reasonable access to care for all enrollees enrolled through the Exchange regardless of an enrollee's medical condition.

We recognize that primary care access is a challenge in many communities nationally, and that more consumers may seek routine primary care services in 2014 given improved access to health insurance coverage. Consistent with the goals and policies of the Affordable Care Act in supporting primary care, in establishing provider networks that ensure broad access to care, we encourage States, Exchanges and health insurance issuers to consider broadly defining the types of providers that furnish primary care services (e.g., nurse practitioners).

g. Service Area of a QHP (§ 155.1055)

In § 155.1055, we propose that Exchanges have a process to establish or evaluate the service areas of QHPs. Under this proposed rule, an Exchange would maintain discretion to pre-determine service areas for plans to cover, permit plans to propose coverage of certain service areas, or negotiate with issuers over service areas during the certification process. This provision is intended to promote greater choice and competition as consistently as possible across a State, and to guard against discrimination, ''cherry picking,'' ''red-lining,'' or other similar efforts to offer health plans only in areas of low risk. We also seek to recognize that the capacity of health insurance issuers varies by region due to some factors that are outside of their control.

In paragraph (a), we propose that an Exchange must ensure that the service area of a QHP covers at least a county, or a group of counties if the Exchange designates such a group, unless the QHP issuer demonstrates that serving a partial county is necessary, nondiscriminatory, and in the interest of qualified individuals and employers. The requirement outlined here parallels the ''county integrity rule'' established in Medicare Advantage, which also outlines examples for determining whether serving a partial county would fall under the ''necessary'' or ''nondiscriminatory'' standards.

In paragraph (b), we propose that an Exchange must ensure that QHP service areas be established without regard to racial, ethnic, language and health status factors outlined in section 2705(a) of the PHS Act. This provision is intended to guard against redlining and other practices that would specifically exclude high-utilizing or high-cost populations.

h. Stand-Alone Dental Plans (§ 155.1065)

In § 155.1065(a), we propose to codify the requirement in section 1311(d)(2)(B)(ii) of the Affordable Care Act that an Exchange allow limited scope stand-alone dental plans to be offered provided that the plan furnishes at least the pediatric essential dental benefit required in section 1302(b)(1)(J) of the Affordable Care Act. We also propose to codify the requirement that the stand-alone dental plan comply with section 9832(c)(2)(A) of the Code and section 2791(c)(2)(A) of the PHS Act.

In paragraph (b), we propose to codify the option for a dental plan to be offered as a stand-alone plan or in conjunction with a QHP. In paragraph (c), we propose to codify section 1302(b)(4)(F) of the Affordable Care Act that allows a health plan be certified as a QHP if it does not offer the pediatric essential dental benefit, provided that a stand-alone dental plan is offered through the Exchange. We also note that dental plan issuers would be considered participating issuers subject to any user fees specified by the Exchange, as established under § 156.50 and § 155.160.

We are considering interpreting this provision such that an Exchange may require issuers of stand-alone dental plans to comply with any QHP certification requirements and consumer protections that the Exchange determines to be relevant and necessary. Potential QHP issuer standards that might be applied to stand-alone dental plans might include: Quality reporting, transparency measures, summary of coverage information, provider network standard, and standards regarding the consumer's experience in comparing and purchasing dental plans. While we provide significant latitude to Exchanges regarding requirements for stand-alone dental plans, we request comment on whether some of the requirements on QHP issuers should also apply to stand-alone dental plans as a Federal minimum and what limits Exchanges may face on placing

requirements on dental plans given that they are excepted benefits.

We also request comment on whether we should set specific operational minimum standards. Substantial operational issues exist with allocating advance payments of the premium tax credit and calculating actuarial value (as defined by section 1302(d)(2) of the Affordable Care Act) when stand-alone dental plans segment coverage of the essential health benefits (as defined in 1302(b) of the Affordable Care Act). Also, a QHP issuer will have to know far enough in advance of the QHP certification process whether it needs to include pediatric dental coverage.

Lastly, some commenters to the RFC requested that we require all dental benefits to be offered and priced separately from medical coverage, even when offered by the same issuer. Such a requirement would preclude QHP issuers from offering a ''bundled'' QHP that covers all essential health benefits, including the pediatric dental benefit, under one premium. While we recognize that requiring a QHP to price and offer dental benefits separately could promote comparison of dental coverage offerings, we have significant concerns about the administrative burden this could impose on Exchanges and QHP issuers. We request comment on whether either option should be required.

i. Recertification of QHPs (§ 155.1075)

In § 155.1075, we propose to codify section 1311(d)(4)(A) of the Affordable Care Act, which requires the Exchange to implement procedures for the recertification of health plans as QHPs. While the Exchange must continuously ensure that QHPs are in compliance with the certification standards, recertification provides a process for an Exchange to conduct a comprehensive review of its QHPs. This process also allows for QHPs and Exchanges to terminate their relationship if intended. In paragraph (a), we provide that the Exchange must establish a process for recertification of QHPs that includes a review of the general certification criteria outlined in § 155.1000(c). We note that the recertification process for the QHPs should be less intensive than the initial certification process, given that the Exchange will have an established relationship with the QHP issuer. An Exchange may also consider using this process to make modifications to any agreements between the Exchange and its QHP issuers.

We permit the Exchange to determine the frequency for recertifying QHPs. The Affordable Care Act does not require an Exchange to recertify QHPs on an annual basis. Therefore, an Exchange has the discretion to decide to recertify QHPs annually, or on a less frequent basis, such as every other year or every three years. Some Exchanges may choose to develop longer recertification periods to reduce the administrative costs associated with such an evaluation. By operation of § 156.200, each QHP must still adhere to the requirements listed in § 155.1000(c) on an ongoing basis. We invite comment as to whether we should require more specific requirements associated with the term length for recertification.

We note that an Exchange that elects to conduct multi-year recertification will need to review certain information on a more frequent basis. For example, the Exchange will need to consider rate increase information and ensure compliance with benefit design standards annually, since issuers may alter rate and benefit design on an annual basis.

We also propose that, after reviewing all relevant information and determining whether to recertify a QHP, the Exchange notify a QHP issuer of its recertification status. If the Exchange determines that a plan should be denied recertification, the Exchange would then proceed decertifying the plan as described in § 155.1080.

In paragraph (b), we propose that the Exchange must complete the recertification process on or before September 15 of the applicable calendar year. We chose this date so that the recertification process is completed in advance of the annual open enrollment period, which begins on October 15 of each year. By providing a September 15 deadline, we allow the Exchanges discretion to determine a recertification timeframe that is most suitable for its consumers and QHPs. The Exchange may choose to complete its recertification process well in advance of the September 15 deadline. We solicit comments on the appropriateness of this recertification deadline.

j. Decertification of QHPs (§ 155.1080)

In § 155.1080, we propose to codify section 1311(d)(4)(A) of the Affordable Care Act, which requires the Exchange to implement procedures for the decertification of health plans as QHPs. In paragraph (a), we define decertification as the termination by the Exchange of the certification status and offering of a QHP. We note that decertification is an action taken by the Exchange in response to the most severe actions of a QHP, or as a result of a determination not to recertify a plan. In paragraph (b), we propose to codify section 1311(d)(4)(A) of the Affordable Care Act, which requires the Exchange to implement procedures for the decertification of health plans as QHPs.

In paragraph (c), we propose that the Exchange may at any time decertify a QHP if the Exchange determines that the QHP issuer or the QHP is no longer acting in accordance with the general certification criteria outlined in § 155.1000(c), including that the QHP participation is no longer in the interest of its enrollees. Similar to the certification and recertification processes, the Exchange has the ability to tailor the decertification process, within the confines of the aforementioned standards, to meet the needs of the market it serves.

The Exchange will have discretion in determining how to implement the decertification process. We recommend that Exchanges solicit input from a broad range of stakeholders, including issuers, when determining how to implement the decertification procedures. We request comments on the creation of the decertification process and what other authorities could be extended to the Exchange to make the process more efficient.

In paragraph (d), we propose to require that the Exchange establish an appeals process for health plans that have been decertified by the Exchange. A health plan that has been decertified should have that ability to request a second evaluation if the issuer believes that its health plan has been unjustly decertified. This appeal process could be implemented in conjunction with the State department of insurance, by the Exchange on its own, or through a third party entity.

In paragraph (e), we propose that if a QHP is decertified, the Exchange must provide notice of the decertification to parties who may be affected. The decertification of a QHP will have an impact on the Exchange market, including the QHP issuer, enrollees of the decertified QHP, who must receive information about a special enrollment period as described in § 155.420, HHS, and the State department of insurance.

B. Part 156—Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges

The Exchanges should be an attractive market for health insurance issuers to achieve the goal of providing consumers and employers with access to a competitive choice of affordable, high quality QHPs. Part 156 contains the proposed standards for QHPs and QHP issuers that are intended to promote robust and meaningful consumer

choice. Many provisions in this part have parallel standards in part 155, because certain standards for States and Exchanges have complementary standards for health insurance issuers seeking to offer, or offering, QHPs through an Exchange. We cross-reference to minimize redundancy and avoid confusion with respect to certain proposed policies. To the extent possible, this approach to drafting is designed to avoid gaps between the minimum standards we propose for Exchanges and QHPs.

1. Subpart A—General Provisions

a. Basis and Scope (§ 156.10)

Proposed § 156.10 of subpart A specifies the general statutory authority for the ensuing proposed regulation and indicates that the scope of part 156 is to establish standards for health plans and health insurance issuers related to the benefit design standards and in regard to offering QHPs through an Exchange. Under § 156.20, we propose definitions for terms used in part 156. Section 156.50 proposes the user fees that participating issuers may pay to contribute to the operations of a State Exchange, and Exchange-related operations.

b. Definitions (§ 156.20)

Many definitions presented in § 156.20 are taken directly from the Affordable Care Act or from existing regulations. The definitions set forth in subpart A reflect general meanings for the terms as they are used in part 156 unless otherwise indicated; the definitions apply strictly for the purposes of part 156. When a term is defined in part 156 other than in subpart A, the definition of the term is limited to a specified purpose in the relevant subpart or section.

Many of the terms defined in this section refer to those defined in § 155.20, including ''applicant,'' ''benefit year,'' ''cost sharing,'' ''cost-sharing reductions,'' ''plan year,'' ''qualified employer,'' ''qualified individual,'' ''qualified health plan or QHP,'' and ''qualified health plan issuer or QHP issuer.'' We define ''benefit design standards'' for the purposes of the requirements related to the benefit packages outlined in the Affordable Care Act. The terms ''group health plan,'' ''health insurance coverage,'' and ''health insurance issuer'' are defined in section § 144.103 of this chapter.

We propose to use the term ''benefit design standards'' to mean the ''essential health benefits package'' defined in section 1302(a) of the Affordable Care Act. To avoid confusion with the term ''essential health benefits,'' which refers only to the definition in section 1302(b) of the Affordable Care Act, we instead refer to the set of health plan requirements as benefit design standards for the purposes of clarity within this proposed rule.

c. Financial Support (§ 156.50)

Section 156.50 contains requirements on participating issuers to pay user fees to support ongoing operations of an Exchange, if a State chooses to impose fees. A State-operated Exchange must be self-sustaining by January 1, 2015, under section 1311(d)(5)(A), which also allows State user fee assessments on participating health insurance issuers, or other methods of funding, to support State Exchange operations.

In paragraph (a), we define the term ''participating issuer'' to mean an issuer offering plans that participate in the specific function that is funded by the user fee. Under this definition, a participating issuer would encompass different segments of issuers of health plans or other benefit plans depending on the Exchange function being funded by the user fee. As this term is used in section 1311(d)(5)(A), it provides an Exchange with the flexibility to collect user fees from issuers that benefit in some way from an Exchange and Exchange-related operations. We note that the term ''participating issuer,'' for the purposes of this section, may include: health insurance issuers, QHP issuers, issuers of multi-State plans (as defined in § 155.1000(a)), issuers of stand-alone dental plans (as described in § 155.1065), or other issuers identified by an Exchange. In paragraph (b), we propose that participating issuers pay any fees assessed by a State Exchange, consistent with Exchange authority outlined in § 155.160.

2. Subpart C—Qualified Health Plan Minimum Certification Standards

Section 1311(c)(1) authorizes the Secretary, by regulation, to establish criteria for the certification of health plans as QHPs, which are described in this subpart. The statute outlines several minimum QHP standards to be established by the Secretary that will foster direct competition on the basis of price and quality and which will increase access to high quality, affordable health care for individuals and small employers. Each Exchange will be responsible for determining whether a health plan seeking to participate meets these minimum requirements to be a QHP and will have the discretion to set additional standards to ensure that offering the plan through that Exchange is in the best interest of consumers.

We received many comments in response to the RFC on minimum QHP certification requirements, which we describe in the preamble to subpart K of part 155 and which we considered as we developed the proposed rule. We highlight that, unless otherwise noted, the standards for QHPs proposed in this subpart do not supersede existing State laws or regulations applicable to health insurance issuers. While this subpart addresses health plan standards that States traditionally set, either through the process of granting licensure or otherwise, the standards proposed here apply specifically to the certification of QHPs for participation in the Exchange and do not exempt health insurance issuers from any State laws or regulations that generally apply to health insurance issuers in that State. We note that if a State establishes a higher standard for licensure than what we outline here as a minimum Federal requirement for health plan certification, such standard would apply.

a. QHP Issuer Participation Standards (§ 156.200)

Section 156.200 outlines the requirements on QHP issuers as a condition of participation in the Exchange. States may choose to establish additional conditions for participation beyond the minimum requirements established by the Secretary.

In paragraph (a), we propose to codify section 1301(a)(1)(A) of the Affordable Care Act. To participate in an Exchange, a health insurance issuer must have in effect a certification issued or recognized by the Exchange to demonstrate that each health plan it offers in the Exchange is a QHP and that the issuer meets all requirements on QHP issuers. We clarify that some requirements in this proposed rule apply to the design of the specific QHPs offered. Other requirements are placed on the issuers related to the offering of QHPs.

In paragraph (b), we outline the set of standards with which a QHP issuer must comply related to the offering of a QHP. We propose in paragraph (b)(1) that the QHP issuer must comply with the requirements set forth in this subpart on an ongoing basis. We expect the Exchange to take into account compliance with the requirements in this subpart not only when determining whether to initially certify a health plan as a QHP, but also when reviewing QHPs for recertification.

In paragraph (b)(2), we propose that QHP issuers must comply with any Exchange processes, procedures, and standards set forth under subpart K of part 155 and § 155.705 for the small group market. We include the requirement to adhere to this certification process as a condition of participation so that the Exchange has the ability to conduct certification processes in a way that best meets the needs of the market it serves. This includes the process in which a health insurance issuer seeking initial certification of a QHP must demonstrate that it complies with the standards listed under paragraph § 155.1000(c).

In paragraph (b)(3), we propose to require that a QHP issuer ensures that each QHP it offers complies with the benefit design standards defined in § 156.20. Benefit design standards relate to the requirement in section 1301(a)(1)(B) of the Affordable Care Act that requires that QHPs offer the essential health benefits, adhere to cost-sharing limits, and meet the levels of coverage described in 1302(a) which will be the subject of future rulemaking.

In paragraph (b)(4), we propose to codify the requirement in section 1301(a)(1)(C)(i) that a QHP issuer be licensed and in good standing to offer health insurance coverage in each State in which such issuer offers health insurance coverage. We interpret the term ''good standing'' to mean that the issuer has no outstanding sanctions imposed by a State's department of insurance. We seek comment on this interpretation. Licensure could also mean a ''certificate of authority,'' or any other State method of approving a health insurance issuer to offer health insurance coverage in the State.

In paragraph (b)(5), we propose that QHP issuers comply with quality standards established in and pursuant to sections 1311(c)(1), 1311(c)(3), 1311(c)(4), and 1311(g) of the Affordable Care Act. We intend to address specific requirements in future rulemaking, such as requirements for QHP issuers related to quality data reporting, quality improvement strategies, and enrollee satisfaction surveys described in these statutory provisions.

In paragraph (b)(6) and (b)(7), we propose that QHP issuers adhere to additional proposed requirements including user fees described in subpart A of part 156, if applicable, and the risk adjustment participation requirements as described in 45 CFR part 153.

In paragraph (c), we outline the requirements on QHP issuers related to the offering of QHPs. In paragraph (c)(1), we propose to codify section 1301(a)(1)(C)(ii), which requires that each QHP issuer offer at least one QHP in the silver coverage level and at least one QHP in the gold coverage level; the levels of coverage are defined in section 1302(d)(1) of the Affordable Care Act. In paragraph (c)(2), we propose to codify section 1302(f) of the Affordable Care Act, which specifies that any QHP issuer offering a non-catastrophic health plan in the Exchange must offer the identical plan as a child-only health plan. Child-only plans are only available to individuals under the age of 21. In paragraph (c)(3), we require the QHP issuer to offer a QHP at the same premium rate consistent with the requirements described in § 156.255(b).

In paragraph (d), we require that QHP issuers adhere to the requirements of this subpart and any additional participation standards that may be applied by the Exchange or the State.

In paragraph (e), pursuant to the authority to set QHP standards in section 1321(a)(1)(B), we propose that QHP issuers must not discriminate based on race, color, national origin, disability, age, sex, gender identity and sexual orientation. Such practices would include, but not be limited to marketing, outreach, and enrollment.

b. QHP Rate and Benefit Information (§ 156.210)

In § 156.210, we propose the requirements for QHP issuers to submit QHP rate and benefit information to the Exchange, including rate justifications. The Exchange will be responsible for ensuring that issuers adhere to this requirement during initial certification and on an annual basis, as specified in § 155.1020.

In paragraph (a), we propose that a QHP's rates must be applicable for an entire benefit year or, for the SHOP, plan year. We propose this requirement since the Exchange will have an annual open enrollment period during which qualified individuals will be able to change their QHP selection. This requirement would shield consumers from rate increases during the benefit year or, for the SHOP, the plan year. For the SHOP, the timing of the rate changes will vary by employer, since the annual open enrollment periods differ by employer. We discuss this in greater detail in § 156.285.

In paragraph (b), we require the QHP issuer to submit rate and benefit information to the Exchange as described in § 155.1020(c). As noted in § 155.1020(c), to the extent possible, HHS seeks to align the required data elements with information already collected as part of the rate review program and State rate filing processes. This will allow both Exchanges and QHPs to leverage already existing information collections for this purpose.

In paragraph (c), we propose to codify the general requirement that a QHP issuer submit a justification for a rate increase prior to implementation of the rate increase as required by section 1311(e)(2) of the Affordable Care Act. As noted in § 155.1020, Exchanges may leverage the preliminary justification collected as part of the rate review process as described in 45 CFR part 154, and consider the rate justification, as appropriate. We are considering a standard in which the issuers will submit a rate justification in the form and manner determined by the Exchange.

We also propose to codify the rate transparency requirement under section 1311(e)(2) of the Affordable Care Act, which requires that issuers post the rate increase justifications on their Web sites so they can be viewed by consumers, enrollees, and prospective enrollees. To promote consistency in how the rate increase justifications are posted on issuer Web sites, and to assist the consumers in understanding the rate increase justifications, we are considering whether we should develop standards for ''prominently posting'' rate increase justifications. Again, to avoid duplication of effort, we intend to leverage the rate increase justification provided by QHP issuers as part of the rate review process.

c. Transparency in Coverage (§ 156.220)

In § 156.220(a) and (b), we propose to codify section 1311(e)(3)(A) of the Affordable Care Act, which establishes a transparency standard as a condition for certification of QHPs. To receive and maintain certification, health insurance issuers must make available to the public and submit to the Exchange, the Secretary, and the State insurance commissioner a broad range of information relevant to the plan's quality and cost. The statutorily required disclosures include: (1) Claims payment policies and practices; (2) periodic financial disclosures; (3) data on enrollment; (4) data on disenrollment; (5) data on the number of claims that are denied; (6) data on rating practices; (7) information on cost-sharing and payments with respect to any out-of-network coverage; and (8) information on enrollee rights under title I of the Affordable Care Act. We clarify that, while the statute refers to ''enrollee and participant rights,'' we believe our definition of enrollee is inclusive of those who may be considered ''participants.'' We seek comment on whether issuers should be required to submit this information to

the Exchange and other entities, or to make such information available to the Exchange and other entities.

Under paragraph (c), we propose to require QHP issuers to provide the information described in paragraph (a) in plain language. Section 1311(e)(3)(B) calls for the Secretary of HHS and the Secretary of Labor to jointly develop and issue guidance on best practices of plain language writing. QHP issuers' use of plain language should be consistent with the definition provided in § 155.20 and the forthcoming guidance.

In paragraph (d) and pursuant to section 1311(e)(3)(C), we propose that QHP issuers make available to the enrollee information on cost-sharing responsibilities for a specific service by a participating provider under that enrollee's particular plan. The information must be provided upon request from the enrollee in a timely manner through a Web site or through other means for individuals without access to the internet.

d. Marketing of QHPs (§ 156.225)

Section 1311(c)(1)(A) of the Affordable Care Act requires that the Secretary establish marketing requirements for QHP issuers seeking to participate in an Exchange, which we propose in § 156.225.

To ensure that an Exchange's oversight of marketing by QHP issuers is consistent with those standards applied in the non-Exchange market and leverages existing State oversight mechanisms, we propose in paragraph (a) to require QHP issuers to comply with any applicable State laws and regulations regarding marketing by health insurance issuers. Though QHP issuers are not exempt from otherwise applicable State law by participating in the Exchange, we propose to apply compliance with State law as a certification standard to reinforce the coordinated efforts of the Exchange and the State department of insurance and to ensure that the Exchange considers a QHP issuer's marketing practices in determining whether offering a QHP is in the best interest of consumers.

In paragraph (b), we propose to codify section 1311(c)(1)(A), which prohibits QHP issuers from employing marketing practices that have the effect of discouraging enrollment of individuals with significant health needs. We seek comment on the best means for an Exchange to monitor QHP issuers' marketing practices to determine whether they have discouraged enrollment of individuals with significant health needs.

We seek comment on also applying a broad prohibition against unfair or deceptive marketing practices by all QHP issuers and their officials, agents and representatives. Such a requirement would protect consumers from deceptive and misleading marketing practices and allow an Exchange to take action to address such practices if the State's department of insurance or applicable State agency did not have the authority or capacity to do so under applicable law.

We considered setting detailed and uniform Federal standards prohibiting specific marketing practices across all QHP issuers, but were concerned about the interaction with current State marketing rules or unintentionally creating ''safe harbors'' that might allow issuers to technically comply with specific requirements without meeting the spirit of the broader marketing protections. We permit States and Exchanges to adopt additional requirements for the marketing of health plans that are most appropriate to the unique market dynamics in that State, both inside and outside the Exchange. Any Exchange that chooses to apply additional marketing requirements to QHP issuers should consider working closely with State insurance departments to ensure that all health insurance issuers in the State are subject to the same minimum marketing requirements in order to create a level playing field with equal consumer protections inside and outside the Exchange.

One particular area of concern in regulating marketing practices of health insurance issuers is ensuring that individuals understand the coverage options made available under the Affordable Care Act. For those individuals already covered by Medicare or other third-party coverage, enrollment in a QHP could be duplicative and/or unnecessary. We are particularly concerned that QHPs may be marketed towards certain vulnerable populations, such as Medicare beneficiaries, for whom coverage from a QHP would not be necessary. We seek comment on a standard that QHP issuers do not misrepresent the benefits, advantages, conditions, exclusions, limitations or terms of a QHP.

e. Network Adequacy Standards (§ 156.230)

In § 156.230, we describe the minimum criteria for network adequacy that health plans must meet to be certified as QHPs, pursuant to section 1311(c)(1)(B) of the Affordable Care Act. We propose in paragraph (a)(1) of this section that QHP issuers must maintain networks for QHPs that include essential community providers in accordance with § 156.235. We propose in paragraph (a)(2) that QHP issuers must maintain networks that comply with any network adequacy standards established by the Exchange consistent with § 155.1050. We propose under paragraph (a)(3) that a QHP issuer must ensure that the provider network of its QHPs must be consistent with the provisions of 2702(c) of the PHS Act as amended by the Affordable Care Act, consistent with section 1311(c)(1)(B) of the Affordable Care Act. Section 2702(c) of the PHS Act requires that health insurance issuers furnish coverage to any individual who applies for a group, small group or individual health plan, with exceptions only if the individual resides outside the plan's service area or if the health insurance issuer does not have the capacity to serve the individual because of its existing obligations to enrollees. This allows QHP issuers an exception to the guaranteed issue requirement if their provider network would not be sufficient to serve additional potential enrollees. In such cases, an issuer must apply such an exception uniformly across all employees or individuals without regard to their claims experience or health status. We note that these standards would be applied to all QHP issuers along with any standards established by the Exchange.

As a condition of certification of the QHP, a health insurance issuer must also provide information to potential enrollees on the availability of in-network and out-of-network providers. We propose in paragraph (b) that a QHP issuer must make its health plan provider directory available to the Exchange electronically and to potential enrollees and current enrollees in hard copy upon request. Exchanges will have discretion to determine the best way to give potential enrollees access to the provider directory for each QHP, including through a link from the Exchange's Web site to the issuer's Web site, or by establishing a consolidated provider directory through which a consumer may search for a provider across QHPs. Under paragraph (b), we also propose that the QHP issuer note providers in the directory that are no longer accepting new patients. We seek comment on standards we might set to ensure that QHP issuers maintain up-to-date provider directories.

f. Essential Community Providers (§ 156.235)

In § 156.235, we propose to codify section 1311(c)(1)(C) of the Affordable Care Act, which requires that a health plan's network include essential community providers who provide care

to predominantly low-income and medically-underserved populations to be certified as a QHP. As specified in section 1311(c)(1)(C), essential community providers include entities specified under section 340B(a)(4) of the PHS Act and section 1927(c)(1)(D)(i)(IV) of the Act as set forth by section 211 of Public Law 111–8.

We received a number of comments in response to the RFC regarding essential community providers. In general, respondents to the RFC offered recommendations on the types of entities that might be included in the definition of an essential community provider, and essential community provider inclusion in QHP provider networks. We considered these comments in developing the standards related to essential community providers.

In paragraph (a) of this section, we require that QHP issuers include in their provider networks a sufficient number of essential community providers, where available, that serve low-income, medically-underserved individuals. We also propose to codify the provision that nothing in this requirement shall be construed to require any QHP to provide coverage for any specific medical procedure. We interpret this to mean that while a QHP issuer must contract with essential community providers, coverage of specific services or procedures performed by an essential community provider is not required.

An important issue with respect to implementing section 1311(c)(1)(C) is establishing a sufficient level of essential community provider participation in QHPs. Although the Affordable Care Act requires inclusion of essential community providers in QHP networks, the Act does not require QHP issuers to contract with or offer contracts to all essential community providers. The statute refers to ''those essential community providers, where available,'' and ''that serve predominantly low-income and medically-underserved,'' which suggests a requirement that QHP issuers contract with a subset of essential community providers.

We considered establishing broad contracting requirements where QHP issuers would have to offer a contract to all essential community providers in each QHP's service area, or establishing a requirement for issuers to contract with essential community providers on an any-willing provider basis. Requiring issuers to offer contracts to all essential community providers would allow continuity of service for enrollees with existing relationships especially in communities where the essential community provider has been the only reliable source of care. However, such a requirement may inhibit attempts to use network design to incentivize higher quality, cost effective care by tiering networks and driving volume towards providers that meet certain quality and value goals.

We note that ''sufficiency'' could be interpreted to mean that the QHP issuer would have to demonstrate to the Exchange that it has a sufficient number and geographic distribution of essential community providers to ensure timely access for low-income, medically underserved individuals in its health plan service area, pursuant to the Exchange's applicable network adequacy and access requirements.

We solicit comment on how to define a sufficient number of essential community providers. We note that States may elect to establish more stringent participation requirements, including adoption of a blanket contracting requirement. Similarly, a potential safe-harbor strategy for QHP issuers would be to offer contracts to all essential community providers or accept any-willing essential community provider in its service area.

We are considering whether to provide separate consideration for integrated delivery network health plans where services are provided solely ''in-house.'' This could include plans where all providers are employees of the plan (''staff model'') and plans where the providers are part of an entity that furnishes all of the plan's services on an exclusive basis. We understand that the essential community provider requirements may not be compatible with the operating model of ''staff model'' plans and exclusive integrated delivery network plans. We seek comment on whether we should create an exemption to the essential community provider requirements for such plans. If such organizations were exempt from the essential community provider requirement, the exemption could be contingent upon the organizations meeting other criteria, such as: evidence of services provided to low-income populations; compliance with national standards for provision of culturally and linguistically appropriate services (CLAS); or implementation of a plan to address health disparities.

In paragraph (b), we specify the types of providers included in the definition of an essential community provider. We include in the definition of essential community providers those providers specifically referenced in statute. In paragraphs (b)(1) and (b)(2) of this section, we define essential community providers to include all health care providers defined in section 340B(a)(4) of the PHS Act and providers described in section 1927(c)(1)(D)(i)(IV) of the Act. We continue to look at other types of providers that may be considered essential community providers to ensure that we are not overlooking providers that are critical to the care of the population that is intended to be covered by this provision. We solicit comment on the extent to which the definition should include other similar types of providers that serve predominantly low-income, medically-underserved populations and furnish the same services as the providers referenced in section 340B(a)(4) of the PHS Act.

We acknowledge that two provisions of the Affordable Care Act regarding payment of essential community providers and payment of Federally Qualified Health Centers (FQHCs) may conflict. Section 1311(c)(2) of the Affordable Care Act states that nothing shall be construed to require a QHP to contract with an essential community provider if such provider refuses to accept the generally applicable payment rates of the plan. This requirement may conflict with section 1302(g) of the Affordable Care Act, which requires that a QHP issuer reimburse FQHCs at each facility's Medicaid prospective payment system (PPS) rate. The FQHC Medicaid PPS rates are facility specific rates paid on a per encounter basis, and they may be higher than the rates that a QHP issuer pays to other contracted providers for similar services.

One approach to reconciling these provisions would be to require QHP issuers to pay at least the Medicaid PPS rate to each FQHC that participates in the issuer's QHP network. This approach would enable FQHCs to be paid their Medicaid PPS rates for services provided to QHP enrollees. However, if FQHC Medicaid PPS rates are greater than comparable amounts paid to other providers, and if many of the enrollees in a QHP receive care at FQHCs, the costs of these QHPs may be greater than the costs of QHPs that do not have many enrollees who are seen at the centers. Also, if Medicaid prospective payment rates exceed QHPs' generally applicable payment rates, requiring QHP issuers to pay the full FQHC Medicaid PPS rate could lead insurers to minimally contract with FQHCs.

We note that there are other practical considerations regarding how issuers would pay the Medicaid PPS rate. For example, it is not clear how QHP issuers would administer the FQHC Medicaid PPS rate, since it is a facility specific rate paid on a per encounter basis for a

pre-determined set of covered services. Issuers would need to replicate each FQHC's Medicaid PPS rate, which may be complicated since Medicaid covered services vary by State and rates vary by FQHC.

Another potential approach to reconciling these two payment provisions would be to permit issuers to negotiate mutually agreed-upon payment rates with FQHCs, as long as they are at least equal to the issuer's generally applicable payment rates. Such an interpretation may furnish FQHCs with a degree of negotiating leverage with issuers to obtain payment rates higher than the issuer's generally applicable payment rates but not tie issuers to the full Medicaid PPS rate for in-network FQHCs. This approach would decrease the incentive to drive patients away from providers that may be best suited to their needs, while providing FQHCs with leverage to be able to negotiate payments that will allow them to continue providing the comprehensive services that are particularly valuable to the individuals they serve. However, this approach may result in FQHCs receiving less than their Medicaid PPS rates for in-network participation. We invite comment on the issue of FQHC payment and solicit other potential approaches for resolving these potentially conflicting provisions.

We also invite comment on establishing requirements regarding reimbursement of Indian health providers qualifying under 340B(a)(4) of the PHS Act. Section 206 of the Indian Health Care Improvement Act (IHCIA) provides that all Indian health providers have the right to recover from third party payers, including insurance companies up to the reasonable charges billed for providing health services or, if higher, the highest amount the insurer would pay to other providers to the extent that the patient or another provider would be eligible for such recoveries. This section also states that no law of any State or provision of any contract shall prevent or hinder this right of recovery. Therefore, this requirement applies whether or not there is a contract between the insurance company and the Indian health provider. We believe that payment requirements under section 206 of IHCIA apply to QHP issuers, as well as to any insurer, employee benefit plan or other third party payer. We invite comment on the payment requirement under section 206 of IHCIA, and how it might be reconciled with the essential community provider payment requirement described in section 1311(c)(2) of the Affordable Care Act.

We also invite comment on other special accommodations that must be made when contracting with Indian health providers. Indian health providers operate under or are governed by numerous federal authorities, including but not limited to the Anti-Deficiency Act, the Indian Self-Determination and Education Assistance Act, the Indian Health Care Improvement Act, the Federal Tort Claims Act, and the Federal Medical Care Recovery Act. Indian health providers serve a specific population in accordance to these and other federal laws. Some RFC commenters recommended that we consider developing a standard contract addendum containing all conditions that would apply to QHP issuers when contracting with Indian health providers. Such an addendum may be similar to the special Indian Health Addendum currently used in the Medicare Prescription Drug Program, which CMS requires all plans to use when contracting with Indian Health Service, tribal organization, and urban Indian organization (I/T/U) pharmacies and serve as a safe-harbor for all issuers contracting with Indian health providers, which would minimize potential disputes and legal challenges between Indian health providers and issuers. We invite comment on the applicability of these special requirements to QHP issuers, and the potential use of a standardized Indian heath provider contract addendum.

g. Treatment of Direct Primary Care Medical Home (§ 156.245)

In § 156.245, we propose to codify section 1301(a)(3) of the Affordable Care Act, which permits a QHP issuer to provide coverage through a direct primary care medical home that meets the requirements established by HHS, provided that the QHP meets all requirements otherwise applicable. We request comment on what standards HHS should establish under this section.

Commenters to the RFC noted that the direct primary care medical home model in the State of Washington has benefited providers by providing predictable income without added administrative costs, while consumers gain access to an affordable and reliable source of primary services that decreases reliance on emergency rooms as a source of routine care.

We interpret the phrase ''direct primary care medical home plan'' to mean an arrangement where a fee is paid by an individual, or on behalf of an individual, directly to a medical home for primary care services, consistent with the program established in Washington. We generally consider primary care services to mean routine health care services, including screening, assessment, diagnosis, and treatment for the purpose of promotion of health, and detection and management of disease or injury.

We considered allowing an individual to purchase a direct primary care medical home plan and separately acquire wrap-around coverage. However, direct primary care medical homes are providers, not insurance companies, which would require the Exchange to develop an accreditation and certification process that is inherently different from certifying health plans and that would significantly depart from the role of an Exchange. Furthermore, allowing a separate offering would require consumers to make two payments for full medical coverage, adding complexity to the process of acquiring health insurance, ensuring enrollee have access to the full complement of the essential health benefits to which they are entitled, and complicating the allocation of advance payments of the premium tax credit.

h. Health Plan Applications and Notices (§ 156.250)

In § 156.250, we establish basic standards for the format of applications and notices provided by the QHP issuer to the enrollee. QHP issuers will be required to provide enrollees with a variety of applications and notices in accordance with the standards for enrollment and termination of coverage. Since these notices will be provided to all enrollees, it is important to ensure that those enrollees with limited English proficiency (LEP) have access to translated materials and enrollees with disabilities can obtain materials in alternate formats.

We propose that QHP issuers must adhere to the standards established for notices in § 155.230(b). The incorporated standard requires QHP issuers to provide meaningful access to LEP individuals and ensure effective communication for people with disabilities. This may include providing information about the availability and means to obtain oral interpretation services, languages in which written materials are available, and the availability of materials in alternate formats for persons with disabilities.

i. Rating Variation (§ 156.255)

Section 2701(a)(1)(A) of the PHS Act, as revised by section 1201 of the Affordable Care Act, limits the variation in premium rating to four factors:

Whether the coverage is for an individual or family; rating area; age; and tobacco use. The specific rating rules will be issued through separate regulation, but this section discusses several rate-related provisions for QHPs.

Consistent with the rating rules provision, section 1301(a)(4) of the Affordable Care Act allows QHP issuers to vary premiums by the rating areas established under section 2701(a)(2), which we propose to codify in § 156.255(a). Section 2701(a)(2) of the PHS Act requires that States establish one or more rating areas within a State, subject to the Secretary's approval. Permitting premium variation by geographic rating area enables health insurance issuers to account for regional variation in health care costs. Because section 1302(a)(4) of the Affordable Care Act directly references the rating areas outlined in section 2701(a)(2) of the PHS Act, we interpret that the rating areas will be applied consistently inside and outside of the Exchange.

In paragraph (b), we codify section 1301(a)(1)(C)(iii) of the Affordable Care Act, which specifies that each QHP issuer must offer a QHP at the same premium rate without regard to whether the plan is offered through an Exchange or whether the plan is offered directly from the issuer or through an agent. We interpret this provision to mean that an issuer must charge a premium that uses underlying rating assumptions that account for all expected enrollees of a QHP, including individuals that enroll in the QHP outside of an Exchange, and for all methods of enrollment, including through an Exchange, an agent or broker, or the issuer itself. Thus, the resulting premium for a QHP would vary only by the rating factors listed in 2701(a) of the PHS Act.

We believe that the rating factor related to family size has significant implications for Exchanges. Pursuant to the Secretary's authority to regulate QHPs under section 1311(c)(1), we are considering options on how to structure family rating for QHPs that are offered in the Exchange. Offering uniform family rating categories will maximize competition between health plans based on price and quality. Our understanding is that issuers currently use multiple rating tiers in the individual market.

In paragraph (c), we propose issuers vary premiums among no more than four different types of family composition that are commonly used among health insurance issuers currently: individual; two adults; adult plus child or children; and a catch-all ''family'' category for two-adult families with a child or children and other family compositions that do not fit in the other categories. QHP issuers must cover all of these four groups, but in doing so may combine some of the identified categories; for example, a QHP issuer may combine the second and third categories to include both two-adult families and families with one adult plus child or children. We believe that such a rating structure would be beneficial to the market because it would limit premium variation within families of similar types.

We recognize that section 2701(a)(4) of the PHS Act requires that any family premium using age or tobacco rating may only apply those rates to the portion of the premium that is attributable to each family member. As a result, calculating a family premium by determining the age and tobacco rated premium for one member of the family and applying a multiplier to set the rating for the entire family is not permitted. We seek comment on how we might structure family rating categories while adhering to Section 2701(a)(4) of the PHS Act. Additionally, we request comment on how to apply four family categories when performing risk adjustment. We also invite comment on alternatives to four categories for defining family composition. We seek comment on how to balance the number of categories offered by QHP issuers in order to reduce potential consumer confusion, while maintaining plan offerings and rating structures that are similar to those that are currently available in the health insurance market.

We are also considering whether to require QHP issuers to cover an enrollee's tax household, including for purposes of applying individual and family rates. We are considering this approach because of the potential challenge of administering the premium tax credit, particularly for families filing with non-spousal adult dependents. We note that QHP issuers would not be required to cover dependents living outside of the Exchange service area. We recognize that such an approach would add non-spousal adult dependents to the family risk pool, but the impact of this configuration may be offset through risk adjustment. We seek comment on the potential considerations of this approach.

j. Enrollment Periods for Qualified Individuals (§ 156.260)

In § 156.260, we propose that QHP issuers comply with the enrollment periods as a condition of offering a QHP. In paragraph (a), we propose that QHP issuers accept and enroll qualified individuals in QHPs only during the enrollment periods described in § 155.410 and § 155.420.

In paragraph (a)(1), we specify that QHP issuers must accept and enroll qualified individuals during the initial enrollment period, described in § 156.410(b), and during the annual open enrollment period thereafter, described in § 156.410(e). In paragraph (a)(2), we propose that QHP issuers accept and enroll qualified individuals in QHPs if they are granted a special enrollment period described in § 155.420. QHP issuers must also abide by all other State laws that may provide an individual with an enrollment period outside of those described in § 155.410 and § 155.420.

For the initial, annual open, and special enrollment periods, we propose to require QHP issuers to adhere to the effective dates of coverage established in § 155.410(c), § 155.410(f), and § 155.420. We propose that qualified individuals who make QHP selections on or before December 22, 2013 would have a coverage effective date of January 1, 2014 and qualified individuals who make a QHP selection between the twenty-third and last day of the month for any month between December of 2013 and February 2014 would have coverage effective the first day of the month immediately following the next month.

In paragraph (b) we propose to require QHP issuers to provide enrollees with notice of their effective date of coverage, and such notice must correspond with the effective dates established in § 155.410(c), § 155.410(f) and § 155.420(b) as applicable.

k. Enrollment Process for Qualified Individuals (§ 156.265)

In § 156.265, we propose that QHP issuers must accept and process enrollment of qualified individuals enrolling in a QHPs. In paragraph (a), we propose that QHP issuers must adhere to the Exchange's process for enrollment in QHPs, which includes standards for the collection and transmission of enrollment information. As a general principle, both the Exchange and the QHP issuer must use a common set of enrollment information for an enrollment to be successful.

We propose in paragraph (b)(1) that QHP issuers use the application adopted pursuant to § 155.405 when accepting applications from individuals seeking to enroll in a QHP through the Exchange enrollment process. We interpret section 1413(b)(1)(A), which requires that the Secretary develop and provide to each State a single, streamlined form, together with section 1311(c)(1)(F), which states that an issuer shall use a

uniform enrollment form for qualified individuals and employers to enroll in QHPs through the Exchange, to require that one single streamlined application developed by HHS with recommendations from the NAIC be used for enrollment in QHPs.

In paragraph (b)(2), we propose that after collecting the uniform enrollment information from an applicant, the QHP issuer must send the information to the Exchange, in accordance with the standards established in § 155.260 and, as applicable, § 155.270. We clarify that the term ''applicant'' is used here as defined in § 155.20. In paragraph (b)(3), we permit the QHP issuer to enroll the individual in a QHP only after it has received confirmation from the Exchange that the eligibility determination is complete and the applicant is a qualified individual.

We propose in paragraph (c) that QHP issuers receive enrollment information electronically from the Exchange in a format and manner that is consistent with the standards established pursuant to § 155.260 and in § 155.270. We seek comment on the frequency with which plans should receive electronic enrollment information.

In paragraph (d), we propose that QHP issuers abide by the premium payment process established by the Exchange and described in § 155.240.

In paragraph (e), we propose to require QHP issuers provide enrollees in the Exchange with an enrollment packet. We plan to issue standards for the content of the enrollment information package, which may include an enrollment card, information on how to access care, the summary of benefit and coverage document, and information on how to access the provider directory and drug formulary and submit a request for a hard copy. We solicit comment on the appropriateness of these documents and any other documents or information that should be included in an enrollment information package.

In paragraph (f), we propose to require QHP issuers provide the summary of benefits and coverage document to qualified individuals, similar to the requirement in section 2715 of the PHS Act. We note that all health insurance issuers must provide such document on several occasions to potential or current enrollees as required under section 2715 of the PHS Act, for which HHS, the Department of Labor and the Treasury will issue implement regulations in the near future; this requirement is consistent with that PHS Act provision.

In paragraph (g), we propose that QHP issuers reconcile enrollment files with the Exchange no less than once a month, consistent with the proposed standard in § 155.400(d). In paragraph (h), we propose that QHP issuers acknowledge the receipt of enrollment information in accordance with Exchange standards established in § 155.400(b)(2). These provisions will protect consumers from potential gaps in coverage that might occur due to errors in communication.

l. Termination of Coverage for Qualified Individuals (§ 156.270)

A key function of an Exchange, described in § 155.430, will be to verify a QHP issuer's standard operating procedures for the termination of coverage for enrollees enrolled in a QHP through the Exchange. In § 156.270, we propose standards for QHP issuers regarding the termination of coverage of enrollees enrolled in QHPs through the Exchange. We propose in paragraph (a) that a QHP issuer may only terminate coverage as permitted by the Exchange in accordance with § 155.430(b), which includes non-payment of premium, fraud and abuse, and relocation outside of the service area, among other situations.

In paragraph (b), we propose that QHP issuers must provide a notice of termination of coverage to the enrollee and the Exchange that is consistent with the standards for effective dates in § 155.430(d). We plan to issue standards for the termination of coverage notice which may include content such as reason for termination and termination effective date. We solicit comment on other information that should be included in the termination notice.

In paragraph (c), we propose that QHP issuers develop a uniform policy as permitted by the Exchange for the termination of coverage due to non-payment of premium in accordance with § 155.430(b)(2)(iii). Section 1412(c)(2)(B)(iv)(II) of the Affordable Care Act requires QHP issuers to provide enrollees receiving advance payments of the premium tax credit with a three-month grace period for non-payment of premium prior to coverage termination, which we propose to codify in paragraph (d). This standard applies only to those enrollees receiving advance payments of the premium tax credit. There is no Federal standard requiring QHP issuers to extend this grace period to enrollees who are not receiving advance payments of the premium tax credit, although the Exchange could choose to require QHP issuers to provide all enrollees with such a grace period, regardless of advance payment status. However, QHP issuers must apply non-payment of premium policies, irrespective of Exchange standards, uniformly to all enrollees in similar circumstances.

In paragraph (d), we propose standards for the application of the three-month grace period for enrollees receiving advance payments of the premium tax credit. We interpret that the three-month grace period only applies to enrollees who have paid at least one month's worth of premiums to establish coverage to ensure that this period applies only when there is a lapse in an enrollee's payment.

During the three-month grace period, we propose that the QHP issuer continue to pay all appropriate claims submitted on behalf of the enrollee. This standard ensures that providers will be reimbursed for care provided to such enrollees during the grace period. In addition, in paragraph (d)(2), we specify how payments received during the grace period would be applied. If an eligible enrollee is more than one month behind on payments, any payment paid to the QHP issuer will be applied to amounts associated with the first billing cycle in which the enrollee was delinquent. The grace period will reset only when the individual has fully paid all outstanding premiums. In paragraph (d)(3), we propose that, during the grace period, the issuer would continue to receive a portion of the premium payment from the advance payments of the premium tax credit from the Department of the Treasury.

In paragraph (e), we propose QHP issuers to provide notice to all enrollees who are delinquent on premium payments. We plan to issue standards for content and timing of the notice. We seek comment on the potential required elements of such a notice, such as the total amount of delinquent payment, possible date of coverage termination and payment options, and the timing and frequency with which such a notice should be provided to enrollees, such as bi-weekly beginning with the first missed payment or more frequently.

In paragraph (f), we propose that if an enrollee receiving advance payments of premium tax credit exhausts the grace period, as provided in paragraph (d), without submitting any premium payment, the QHP issuer may terminate coverage effective at the completion of the three-month period. This termination must be preceded by the appropriate notice as referenced in paragraph (e).

In paragraph (g), we propose to require QHP issuers to maintain records of termination of coverage in accordance with Exchange standards as established in § 155.430(c). In paragraph (h), we propose that QHP issuers abide by the

effective dates for termination of coverage as described in § 155.430(d).

m. Accreditation of QHP Issuers (§ 156.275)

In § 156.275, we describe the accreditation standards for QHP issuers. In paragraph (a)(1), we propose to codify the statutory requirement that a QHP issuer be accredited on the basis of local performance in each of the nine categories listed under section 1311(c)(1)(D)(i) of the Affordable Care Act. We clarify that we interpret ''local performance'' to mean the performance of the QHP issuer in the State in which it is licensed. We note that, although Section 1311(c)(1)(D)(i) of the Affordable Care Act requires a health plan to be accredited in order to be certified as a QHP, we interpret this to mean that QHP issuers must be accredited, since accrediting entities accredit issuers, not plans.

We also further specify that a QHP issuer must be accredited by an entity recognized by HHS. We intend to provide the standards by which HHS will recognize accrediting entities in future rulemaking. Section 1311(c)(1)(D)(i) of the Affordable Care Act requires that QHP issuers be accredited by entities recognized by the Secretary with ''transparent and rigorous methodological and scoring criteria.'' We seek comment on the standards by which HHS should recognize accrediting bodies. We may model this process in part on a similar process used by CMS to identify accrediting organizations for Medicare Advantage plans; this process can be found at 42 CFR 422.157–422.158. We anticipate addressing this issue and identifying recognized accrediting entities as early as possible to give health insurance issuers seeking to participate in the Exchange the time necessary to seek accreditation from appropriate accrediting entities.

In paragraph (a)(2), we propose to require a QHP issuer to authorize the accrediting entity to release certain materials related to the QHP issuer's accreditation (e.g., a copy of its most recent accreditation survey) to the Exchange and to HHS.

In paragraph (b), we propose to codify the requirement that a QHP issuer must obtain its accreditation within a time period established by the Exchange under § 155.1045. Allowing these issuers extra time to meet the standards proposed in this section may encourage a wider variety of health insurance issuers to seek to offer QHPs through the Exchange.

n. Segregation of Funds for Abortion Services (§ 156.280)

Federal funds cannot be used for abortion services (except in the cases of rape or incest, or when the life of the woman would be endangered). The Affordable Care Act is fully consistent with this policy and includes additional provisions to enforce it. Section 156.280 of this proposed rule codifies section 1303 of the Affordable Care Act. This codification includes the non-discrimination clause for providers and facilities, a voluntary choice clause for issuers with respect to abortion services, the standards for the segregation of funds for QHP issuers that elect to cover abortion services for which public funding is prohibited, and the associated communication requirements related to such services. In addition, the Office of Management and Budget and HHS jointly issued ''Pre-Regulatory Model Guidelines Under Section 1303 of the Affordable Care Act'' on September 20, 2010.[10] This pre-regulatory guidance furnishes potential standards to meet the segregation requirements of the Affordable Care Act. We are soliciting comment on the model guidelines; we intend that the model guidelines may serve as the basis for the final rule in connection with the provisions included in section 1303 of the Affordable Care Act.

We note that, to maintain consistency with the definitions and terminology used in this part, we have substituted the term ''QHP'' in the regulation where ''plan'' is used in the statute and ''QHP issuer'' in the regulation where ''issuer of a qualified health plan'' is used in the statute.

o. Additional Standards Specific to the SHOP (§ 156.285)

In § 156.285, we establish requirements for QHP issuers as a condition of participating in the SHOP. In general, QHP issuers must meet the same requirements for the SHOP as the Exchange, along with the additional requirements prescribed in this section.

In paragraph (a), we propose rating and premium payment requirements for QHP issuers in the SHOP. In paragraph (a)(1), we specify that the QHP issuer must accept payment of premiums from the SHOP in accordance with § 155.705(b)(4). We note that this proposed requirement reduces complexity by ensuring the issuer receives all payments from a single source. In paragraph (a)(2), we propose that QHP issuers abide by the rate setting timeline established by the SHOP in § 155.705(b)(5). Since the SHOP allows qualified employers to enter the SHOP on a rolling basis, QHP issuers may establish new rates on a quarterly or monthly basis in accordance with SHOP standards. In paragraph (a)(3) we propose that QHP issuers charge the same contract rate for a plan year.

In paragraph (b), we propose requirements for QHP issuers consistent with SHOP enrollment periods. QHP issuers must accept and enroll applicants during the rolling initial enrollment period, the qualified employer's annual employee open enrollment period, and special enrollment periods for a SHOP as established in § 155.725 and in § 155.420 with the exception of (d)(3) and (d)(6). In addition to the enrollment periods, we propose that QHP issuers abide by the effective dates of coverage established in § 155.410(c). We are considering whether to require QHPs in the SHOP to allow employers to offer dependent coverage. We solicit comment on this potential requirement.

In paragraph (c), we propose QHP issuers abide by the SHOP enrollment process requirements and timeline, established pursuant to § 155.720(b). In paragraph (c)(2), we propose that QHP issuers accept electronic transmission of enrollment information frequently from the SHOP in accordance with the requirements pursuant to § 155.260 and § 155.270. In paragraph (c)(3), we propose that QHP issuers provide all new enrollees with the enrollment information package as described in § 156.265(e). In paragraph (c)(4), we proposed to require QHP issuers to provide qualified employers and employees with the summary of cost and coverage document in accordance with the standards described in § 156.265(f).

In paragraph (c)(5), we propose QHP issuers reconcile enrollment files with the SHOP at least monthly. In paragraph (c)(6), we propose that the QHP issuers abide by the SHOP standards for acknowledgement of the receipt of enrollment information. In paragraph (c)(7), we propose that the QHP issuers must issue qualified employees a policy that aligns with the qualified employer's plan year and contract established in paragraph (a)(3). For example, if an employee is hired mid-plan year, the QHP issuer would issue an abbreviated policy for the duration of the employer's plan year so the enrollee will be eligible for an annual open enrollment period at the completion of the qualified employer's plan year.

[10] OMB and HHS Pre-Regulatory Guidance: *http://www.whitehouse.gov/sites/default/files/omb/assets/financial_pdf/segregation_2010–09–20.pdf.*

In paragraph (d)(1), we propose general standards related to termination of coverage in the SHOP that are largely similar to the standards for the Exchange with respect to their enrollees from the individual market. However, in paragraph (d)(1)(ii), we propose to require the QHP issuer to provide the qualified employers and employees with a notice of termination of coverage of enrollees and QHP non-renewal, as described in § 156.270(a) and § 156.290(b). This will ensure that the qualified employer is aware of the changes in coverage for its employees and the availability of coverage in the SHOP.

In paragraph (d)(2), we propose that a QHP issuer terminate all enrolled qualified employees of the withdrawing employer if the employer chooses to stop participating in the SHOP since the enrollee will no longer be eligible for SHOP coverage.

p. Non-Renewal and Decertification of QHPs (§ 156.290)

In § 156.290(a), we propose requirements on QHP issuers that elect to not seek recertification with the Exchange. In paragraph (a)(1), the QHP issuer must notify the Exchange of its decision prior to the beginning of the recertification process adopted by the Exchange pursuant to § 155.1075. This notification will allow time for the Exchange to determine if it is in the best interest of the qualified individuals and employers to begin modifying the certification process to increase the number of QHPs offered in the Exchange. In paragraph (a)(2), we propose that QHP issuers must continue covering benefits for each enrollee until the completion of the benefit year or plan year for the SHOP. It is critical that enrollees' coverage remain unaffected during the benefit or plan year due to an issuer's decision to withdraw from the Exchange.

In paragraph (a)(3), we propose that a QHP issuer must continue providing the Exchange with reporting information for the benefit or plan year even after withdrawing its QHP from the Exchange. We recognize that a time lag often exists in the collection of data and include this requirement to ensure the Exchange is able to compile a complete set of data records for the QHP.

In paragraph (a)(4), we propose that a QHP issuer provide notice of the non-renewal to enrollees of the QHP, as described in paragraph (b) of this section. In paragraph (a)(5), we propose that a QHP issuer must terminate coverage for enrollees in accordance with the applicable requirements in § 156.270.

In paragraph (b), we propose to require QHP issuers that elect not to seek recertification to provide a written notice to each enrollee. HHS will issue future guidance on the timing and content of the notice. In developing this notice, we may adopt some of the concepts from the Medicare Advantage non-renewal notice, in which the issuer must provide notice at least 90 days prior to the effective date of non-renewal and include information on the enrollee transition process and alternatives for other coverage through the Exchange. We solicit comment on the potential content of the non-renewal notice and any other information we should consider including.

In paragraph (c), we propose that if an Exchange decertifies a QHP, the QHP issuer must terminate coverage for the QHP enrollees only after the Exchange has notified the QHP's enrollees as described in § 155.1080 and enrollees have had the opportunity to enroll in other coverage. We seek comment on the extent to which enrollees should continue to receive coverage from a decertified plan, even if it is for only a short period of time.

q. Prescription Drug Distribution and Cost Reporting (§ 156.295)

Section 6005 of the Affordable Care Act added section 1150A to the Act, which requires a QHP issuer to provide to HHS information on the distribution of prescription drugs, pharmacy benefit management activities, the collection of rebates and other monies in conducting these activities, and costs incurred to provide those drugs. We propose to codify the requirements contained in section 6005 here in § 156.295.

In paragraph (a), we propose to codify the elements specified in section 1150A(b) of the Act that a QHP issuer must report to HHS in a form and manner to be determined by HHS. Specifically, we propose that the QHP issuer must provide the following information: (1) The percentage of all prescriptions that were provided under the contract through retail pharmacies compared to mail order pharmacies, and the percentage of prescriptions for which a generic drug was available and dispensed compared to all drugs dispensed, broken down by pharmacy type, that is paid by the QHP issuer or pharmacy benefit manager (PBM) under the contract; (2) the aggregate amount, and the type of rebates, discounts, or price concessions, with certain exceptions, that the PBM negotiates that are attributable to patient utilization under the plan, and the aggregate amount of the rebates, discounts, or price concessions that are passed through to the plan sponsor, and the total number of prescriptions that were dispensed; and (3) the aggregate amount of the difference between the amount the QHP issuer pays the PBM and the amounts that the PBM pays retail pharmacies, and mail order pharmacies, and the total number of prescriptions that were dispensed. We anticipate issuing guidance on these reporting requirements. We seek comment on how a QHP issuer whose contracted PBM operates its own mail order pharmacy can meaningfully report on the aggregate difference between what the QHP issuer pays the PBM and the PBM pays the mail order pharmacy.

We clarify that, for the purposes of this section, we interpret ''generic drug'' to have meaning given to the term in 42 CFR 423.4, which is used in the Medicare Prescription Drug Benefit Program. We seek comment on potential definitions for ''rebates,'' ''discounts'' and ''price concessions''; we are considering using the term ''direct and indirect remuneration,'' a term used in regulations related to the Medicare Prescription Drug Benefit Program, to encompass these various arrangements.

The statute refers to PBMs, entities with which health insurance issuers often contract to perform activities such as prescription drug claims processing, negotiation with prescription drug manufacturers, the development and maintenance of pharmacy networks, or the distribution of prescription drugs on behalf of the health insurance issuer. We interpret the statutory references to PBMs to include any entity that performs such activities on behalf of a QHP issuer; we seek comment on this interpretation and whether we should define PBMs as such in this section. We seek comment on how to minimize the burden of these reporting requirements.

In paragraph (c) we propose to codify the confidentiality requirements to ensure that this information is not disclosed by either HHS or the QHP issuer except under specific circumstances described in the Affordable Care Act. The exceptions allow HHS to de-identify and aggregate prescription drug pricing, rebate and distribution information to report it to the Comptroller General or the Congressional Budget Office.

Finally, we propose under paragraph (c) to codify the penalties for noncompliance. Specifically, a QHP issuer that does not provide HHS the information required under paragraph (b) or knowingly provides false information would be subject to the provisions of subsection (b)(3)(C) of section 1927 of the Act. Under this subsection, if the information is not

provided at all, the QHP issuer would be subject to a fine that would increase $10,000 each day that the information is not provided. If the information is not reported within 90 days of the set deadline, the QHP issuer would lose its contract with the Exchange. If the QHP issuer provides false information, it would be subject to a fine not to exceed $100,000 for each piece of false information provided.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Below is a partial summary of the proposed information collection requirements outlined in this regulation. Any information collection requirements in this regulation which are not outlined below will be subject to a separate notice and comment process under the Paperwork Reduction Act. We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding General Standards Related to the Establishment of an Exchange (§ 155.105 and § 155.110)

Within Part 155, subpart B of this proposed rule, we describe reporting requirements for a State to receive approval of its Exchange Plan by January 1, 2013. For purposes of presenting an estimate of paperwork burden in Part 155, we reflect full participation of all States and the District of Columbia in operating an Exchange. However, we recognize that not all States will elect to operate their own Exchanges, so these estimates should be considered an upper bound of burden estimates. These estimates may be adjusted proportionally in the final rule based upon additional information as States progress in their Exchange development processes.

As discussed in § 155.105, States are required to submit an Exchange plan to HHS. As noted above, we plan to issue a template outlining the required components of the Exchange Plan, subject to the notice and comment process under the Paperwork Reduction Act. We estimate that it will take a State approximately 160 hours (approximately one month) for the time and effort needed to develop the plan and submit to HHS. We estimate minimal burden requirements for developing the Exchange plan as States will be gathering most of the information needed for the plan through the planning grants provided by HHS. States are also required to make the governance principles available to the public. We estimate that it will take States 40 hours for the time and effort to develop these principles and disclose this information to the public. This estimate is similar to estimates provided for reporting requirements for Medicare Part D as described in § 423.514.

We estimate that all 50 States and the District of Columbia will establish an Exchange and will be subject to meeting these requirements. Again, this estimate should be considered an upper bound, and we may revise these estimates in the final rule based upon additional information as States progress in their Exchange development processes. We estimate that it will take 200 hours for a State to meet these provisions. The total burden for all States and the District of Columbia is 10,200 hours. For the purposes of this estimate, we assume that meeting these requirements will take a health policy analyst 120 hours (at an average wage rate of $43 an hour) and a senior manager 80 hours (at $77 an hour). The wage rate estimates include a 35% fringe benefit estimate for state employees, which is based on the March 2011 Employer Costs for Employee Compensation report by U.S Bureau of Labor Statistics. This fringe benefit estimate will be used throughout this section for all presumed state personnel. The estimated cost burden for each State is $11,320 with a total estimated burden of $577,320.

As described in § 155.105, States must also notify CMS of any changes to its Exchange proposal. We estimate that 5 States submit changes and that it will take each state 12 hours to develop the notification and submit to CMS for a total burden of 60 hours. We presume that it will take a health policy analyst 12 hours (at $43 an hour) to meet this requirement. The estimated burden cost per State is $516 for a total cost burden estimate of $2,580 for five States.

B. ICRs Regarding General Functions of an Exchange (§ 155.205)

In Part 155, subpart C we describe the information and reporting requirements that Exchanges are required to perform. According to provisions spelled out in this subpart, Exchanges are required to collect and populate the Web site they develop with information on qualified health plans, premium and cost-sharing information, benefits and coverage of qualified health plans, levels of plan coverage, medical loss ratio information, transparency of coverage, and a provider directory.

The burden estimate related to the Web site reflects the time and effort needed to collect the information described above and disclose this information on a Web site; however, we understand that overall administrative burden and costs will be higher for Web site development and testing. These costs are reflected in the impact analysis for Exchanges. Assuming that all States and the District of Columbia establish Exchanges, an upper bound estimate, we estimate that it will take 320 hours (approximately 2 months) for each State to meet this requirement for a total estimate of 16,320 hours. We presume that it will take a health policy analyst 40 hours (at $43 an hour), a financial analyst 90 hours (at $62 an hour), a senior manager 50 hours (at $77 an hour), and various network/computer administrators or programmers 140 hours (at $54 an hour) to meet the reporting requirements for this subpart. We estimate the total cost burden for an Exchange to be $18,710 for a total estimated burden of $954,210 for all 50 States and the District of Columbia.

C. ICRs Regarding Exchange Functions: Enrollment in Qualified Health Plans (§ 155.400–§ 155.430)

Within Part 155 subpart E of this proposed rule, we describe the requirements of Exchanges in the enrollment of qualified individuals and disenrollment. As discussed in § 155.400, Exchanges are required to maintain records of enrollment annually. We estimate that this will take an exchange 52 hours annually to maintain these records. This estimate is similar to Medicare Part D, where is was estimated that it will take 52 hours on an annual basis for plan sponsors to maintain books, records, and documents on accounting procedures and practices as described in § 423.505. Estimates related specifically to the maintenance of records for enrollment were not provided in Medicare Part D.

Exchanges are also required to submit enrollment information to HHS on a monthly basis, and reconcile enrollment information on at least a monthly basis. We estimate that it will take an Exchange 12 hours submit this information and 12 hours to reconcile this information on a monthly basis. Exchanges are also required submit the number of coverage terminations to HHS. We estimated that it will take 12 hours for an Exchange to submit this information. These estimates are similar to estimates provided in Medicare Part D rule for data submission. For example, Medicare Part D estimated that it would take plan sponsors approximately 10 hours annually for plan sponsors to submit data on aggregated negotiated drug pricing from pharmaceutical companies described in § 423.104. We provide a slightly higher estimate for the submission of data due to the complexity of the Exchange program.

Exchanges are also required to provide a notice of eligibility to the applicant and a notice of the annual open enrollment period to the applicant. Estimates related to notices in this subpart and throughout the proposed rule for Exchanges take into account the time and effort needed to develop the notice and make it an automated process to be sent out when appropriate. As such, we estimate that it will take approximately 16 hours annually for the time and effort to develop and submit a notice when appropriate. Again, this estimate is slightly higher than the 8 hours estimated for notices discussed in the Medicare Part D rule and reflects the overall complexity of the Exchange program.

States are required to maintain records of termination coverage. Again, we estimate that this will take an exchange 52 hours annually to maintain these records. We estimate that all 50 States and the District of Columbia will establish an Exchange subject to these reporting requirements. This estimate is an upper bound of burden as a result of the reporting requirements in this subpart; we will revise these estimates in the final rule as States progress in their Exchange development. We estimate that it will take 436 hours for an Exchange to meet these reporting requirements for a total of 22,236 hours. We presume that it will take an operations analyst 224 hours (at $55 an hour), a health policy analyst 119 hours (at $43 an hour), and a senior manager 93 hours (at $77 an hour) to meet the reporting requirements for a burden cost estimate of $24,598 for an Exchange and total estimated burden costs of $1,254,498 for all 50 States and the District of Columbia.

D. ICRs Regarding Exchange Functions: Small Business Health Options Program (SHOP) (§ 155.715–§ 155.725)

Part 155, subpart H of this proposed rule describes reporting requirements for SHOP. As described in § 155.715 through § 155.725, the SHOP is required to provide the following notices:

- Notice to employer of reason to doubt information submitted;
- Notice to employer of non-resolution for reason to doubt;
- Notice to individual of inability to substantiate employee status;
- Notice of employer eligibility;
- Notice of employee eligibility;
- Notice of employer withdrawal from SHOP;
- Notification of effective date to employees;
- Notice of employee termination of coverage to employer;
- Notice of annual employer election period; and
- Notice to employee of open enrollment period.

As discussed previously, we estimate that it will take 16 hours annually for a SHOP to provide each notice as described in this subpart. The SHOP is also required to maintain records for SHOP enrollment and reconcile SHOP enrollment files on a monthly basis. Again, we estimate that this will take 52 hours annually for a SHOP to maintain SHOP enrollment records. This estimate is similar to Medicare Part D, where it was estimated that it will take 52 hours on an annual basis for plan sponsors to maintain books, records, and documents on accounting procedures and practices as described in § 423.505. Estimates related specifically to the maintenance of records for enrollment were not provided in Medicare Part D. We also estimate that it will take 12 hours for a SHOP to reconcile this information on a monthly basis.

We estimate that that all 50 States and the District of Columbia will establish a SHOP subject to meeting these reporting requirements. This estimate is an upper bound of burden as a result of the reporting requirements in this subpart; we will revise these estimates in the final rule as States progress in their Exchange development. We estimate that it will take each SHOP 356 hours to meet these requirements for a total of 18,156 hours. We presume that it will a health policy analyst 132 hours (at $43 an hour), a senior manager 80 hours (at $77 an hour), and an operations analyst 144 hours (at $55 an hour) to meet these reporting requirements for an estimated cost burden of $19,756 for each Exchange. The total estimated cost burden is $1,007,556 for all 50 States and the District of Columbia.

E. ICRs Regarding Exchange Functions: Certification of Qualified Health Plans (§ 155.1020, § 155.1040, and § 155.1080)

Within Part 155, subpart K, we describe data collection and reporting requirements for Exchanges related to the certification of qualified health plans. As described in § 155.1020, § 155.1040, and § 155.1080, Exchanges are required to collect qualified health plan issuer reports on covered benefits, rates, and cost-sharing requirements. We estimate that it will take 12 hours for an Exchange to collect this information from issuers annually. This estimate is similar to estimates for data collection described in the Medicare Part D rule. Exchanges are also required to collect information on coverage transparency from issuers. Again, we estimate that it will take 12 hours for an Exchange to collect this information. Finally, Exchanges are required to provide a notice of the decertification, if applicable, of a QHP to the QHP issuer, Exchange enrollees, HHS, and the State insurance department. This burden was estimated at 16 hours for an Exchange to provide notice.

For this burden exercise, we estimate that all 50 States and the District of Columbia will establish an Exchange subject to these reporting requirements, an upper bound estimate. We further estimate that it will take 40 hours for an Exchange to meet the provisions discussed, with a total burden estimate of 2,040 hours for all 50 States and the District of Columbia. We presume that it will take an operations analyst 32 hours (at $55 an hour) and a senior manager 8 hours (at $77 an hour) to carry out the requirements in this subpart. HHS estimates that the cost burden for an Exchange to meet the reporting requirements in subpart K to be $2,376 with a total cost burden estimate of $121,176 for all 50 States and the District of Columbia.

F. ICRs Regarding Qualified Health Plan Minimum Certification Standards (§ 156.210–§ 156.290)

Part 156, subpart C describes reporting requirements for issuers. Each qualified health plan issuer is required to report annually to the Exchange information on benefits and rates, justification of rate increases, coverage transparency, and a summary of cost and coverage documents, including notice of coverage of abortion provided by a QHP plan. Issuers are also required to make available enrollee cost sharing information, provide information to applicants and enrollees, provide enrollment packages, collect enrollment information and submit this information

to the Exchange, reconcile enrollment files on a monthly basis, and maintain records related to termination of coverage. There are also several notices that issuers must provide to enrollees related to the effective date of coverage, non-renewal of coverage, termination of coverage, and payment delinquency; and to the Exchange for non-renewal of recertification.

As described in § 156.285, for the SHOP program, issuers must provide an enrollment package to SHOP enrollees and a summary of benefits and coverage to employers and employees; reconcile enrollment files for SHOP on a monthly basis; and provide notice to SHOP enrollees of termination of coverage. As discussed previously, estimates related the collection and submission of data; maintenance of records, notices are similar to estimates provided in the Medicare Part D rule.

Qualified health plan issuers must also submit to the Exchange and HHS on an annual basis information on drug distribution and costs. We estimate that it will take an issuer 24 hours to submit this data. This estimate is a slight increase from the Medicare Advantage estimate of 15 hours for submitting data for drug claims as described for § 423.329 for Medicare Part D and reflects the complexity of reporting this data for the Exchange program.

For the purpose of this estimate and whenever we refer to burden requirements for issuers, we utilize estimates of the number of issuers provided by the Healthcare.gov Web site as this site provides the best estimate of possible issuers at this time. Based on preliminary findings there are approximately 1827 issuers in the individual and small group markets. While we recognize that not all issuers will offer QHPs, we use the estimate of 1827 issuers as the upper bound of participation and burden.

We estimate that it will take an issuer 588 hours to meet these reporting requirements for a total burden estimate of 1,074,276 hours for all 1827 issuers. We presume that it will take at least two health policy analysts 80 hours (at an average private industry rate of $50 an hour), a financial analyst 124 hours (at $57 an hour), an operations analyst 352 hours (at $51 an hour), and a senior manager 32 hours (at $72 an hour) to meet these reporting requirements. These wage estimates include a 30% fringe benefit rate for the private sector as reported by the U.S. Bureau of Labor Statistics in the March 2011 Employer Costs for Employee Compensation report. The estimated burden cost for each issuer is $31,324. The total estimated burden cost for all issuers is $57.2 million.

Regulation section(s)	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Labor cost of reporting ($)	Total labor cost of reporting ($)
155.105–155.110	51	1	200	10,200	11,320	577,320
155.105	5	1	12	60	516	2,580
155.205	51	1	320	16,320	18,710	954,210
155.400–155.430	51	1	436	22,236	24,598	1,254,498
155.715–155.725	51	1 Exception: Monthly for SHOP enrollment reconciliation	356	18,156	19,756	1,007,556
155.1020–155.1080	51	1	40	2,040	2,376	121,176
156.210–156.290	1827	1 Exception: monthly for enrollment and SHOP enrollment reconciliation	588	1,074,276	31,324	57.2 million

Salaries and fringe benefit estimates were taken from the Bureau of Labor Statistics Web site: (*http://www.bls.gov/oco/ooh_index.htm*).

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the ADDRESSES section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, [CMS–9989–P],

Fax: (202) 395–5806; or

E-mail: *OIRA_submission@omb.eop.gov.*

IV. Summary of Preliminary Regulatory Impact Analysis

The summary analysis of benefits and costs included in this proposed rule is drawn from the detailed Preliminary Regulatory Impact Analysis, available at *http://cciio.cms.gov* under ''Regulations and Guidance.'' That preliminary impact analysis evaluates the impacts of this proposed rule and a second proposed rule, ''Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment.'' The second proposed rule is published elsewhere in this **Federal Register**. The following summary focuses on the benefits and costs of this proposed rule.

A. Introduction

HHS has examined the impacts of the proposed rule under Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits (both quantitative and qualitative) of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of

reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated an ''economically'' significant rule, under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Using the Small Business Administration (SBA) definitions of small entities for agents and brokers, providers, and employers, HHS tentatively concludes that a significant number of firms affected by this proposed rule are not small businesses.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is approximately $136 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. HHS does not expect this proposed rule to result in one-year expenditures that would meet or exceed this amount.

B. Need for This Regulation

This proposed rule would implement standards for States related to the Establishment of Exchanges and Qualified Health Plans consistent with the Affordable Care Act. The Exchanges will provide competitive marketplaces for individuals and small employers to directly compare available private health insurance options on the basis of price, quality, and other factors. The Exchanges, which will become operational by January 1, 2014, will help enhance competition in the health insurance market, improve choice of affordable health insurance, and give small business the same purchasing power as large businesses.

C. Summary of Costs and Benefits of the Proposed Requirements

Two proposed regulations are being published simultaneously to implement components of the Exchange and health insurance premium stabilization policies in the Affordable Care Act. The detailed PRIA, available at *http://cciio.cms.gov* under ''Regulations and Guidance,'' evaluates the impacts of both proposed rules, while this summary focuses on the benefits and costs of the proposed requirements in this Exchange NPRM.

Benefits in response to the proposed regulation:

Research has consistently noted that health insurance coverage improves health outcomes. For example, individuals without health insurance are significantly more likely to be at risk of mortality.[11] Secondly, lack of health insurance significantly increases financial risk for individuals. Thirdly, increases in health insurance results in a decrease in uncompensated care costs. This proposed regulation is expected to decrease the level of uninsurance and therefore should produce a benefit in the form of improved health outcomes, decreased fiscal risk, and decrease in uncompensated care costs. In addition, we estimate that for individuals and some employers, risk pooling and economies of scale will reduce the administrative cost of health insurance, and competition may increase insurers' incentive to lower payments to health care providers, reducing premiums and potentially national health expenditures.

The Exchanges and policies associated with them, according to CBO, are expected to reduce premiums for the same benefits compared to prior law. It estimated that, in 2016, people purchasing non-group coverage through the Exchanges would pay 7 to 10 percent less due to the healthier risk pool that results from the coverage expansion. An additional 7 to 10 percent in savings would result from gains in economies of scale in purchasing insurance and lower administrative costs from elimination of underwriting, decreased marketing costs, and the Exchanges' simpler system for finding and enrolling individuals in health insurance plans.[12]

Costs in Response to the Proposed Regulation

Meeting the proposed requirements will have costs on Exchanges and on issuers of qualified health plans (QHPs). The administrative costs of operating an Exchange will almost certainly vary by the number of enrollees in the Exchange due to economies of scale, variation in the scope of the Exchange's activities, and variation in average premium in the Exchange service area. However, we believe major cost components for Exchanges will include: IT infrastructure, Navigators, notifications, enrollment standards, application process, SHOP, certification of QHPs, and quality reporting. The major costs on issuers of QHPs will include: Accreditation, network adequacy standards, and quality improvement strategy reporting. CBO estimates that the administrative costs to QHP issuers would be more than offset by savings resulting from lower overhead due to new policies to limit benefit variation, prohibit ''riders,'' and end under-writing.

Methods of Analysis

This preliminary impact analysis references the estimates of the CMS Office of the Actuary (OACT) (CMS, April 22, 2010), but primarily uses the underlying assumptions and analysis done by the Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation. Their modeling effort accounts for all of the interactions among the interlocking pieces of the Affordable Care Act including its tax policies, and estimates premium effects that are important to assessing the benefits of the NPRM. A description of CBO's methods used to estimate budget and enrollment impacts is available.[13] The CBO estimates are not significantly different than the comparable components produced by OACT. Based on our review, we expect that the requirements in these NPRMs will not substantially alter CBO's estimates of the budget impact of Exchanges or enrollment. The proposed requirements are well within the parameters used in the CBO modeling of the Affordable Care Act and do not diverge from assumptions embedded in the CBO model. Our review and analysis of the proposed requirements indicate that the impacts are within the model's margin of error.

Summary of Costs and Benefits

CBO estimated program payments and receipts for outlays related to grants for Exchange startup. States' initial costs to the creation of Exchanges will be funded by these grants.

[11] Franks, Peter et al. ''Health Insurance and Mortality.'' Journal of American Medical Associates. 6(737–741) 1993.

[12] Congressional Budget Office, ''Letter to the Honorable Evan Bayh: An Analysis of Health Insurance Premiums Under the Patient Protection and Affordable Care Act.'' (Washington2009).

[13] CBO, ''CBO's Health Insurance Simulation Model: A Technical Description.'' (2007, October).

TABLE 1—ESTIMATED OUTLAYS FOR THE AFFORDABLE INSURANCE EXCHANGES FY 2012–FY 2016

[In billions of dollars]

Year	2012	2013	2014	2015	2016
Grant Authority for Exchange Start up	0.6	0.8	0.4	0.2	0.0

SOURCE: CBO.

Regulatory Options Considered

In addition to a baseline, HHS has identified two regulatory options for this proposed rule as required by Executive Order 12866.

(1) Have a uniform Standard for Operations of an Exchange.

Under this alternative HHS would require a single standard for State operations of Exchanges. The proposed regulation offers States the choice of whether to establish an Exchange, how to structure governance of the Exchange, whether to join with other States to form a regional Exchange, and how much education and outreach to engage in, among other factors. This alternative model would restrict State flexibility to some extent, requiring a more uniform standard that States must enact in order to achieve approval of an Exchange.

(2) Uniform Standard for Health Insurance Coverage.

Under this alternative, there would be a single uniform standard for certifying QHPs. QHPs would need to meet a single standard in terms of benefit packages, network adequacy, premiums, etc. HHS would set these standards in advance of the certification process and QHPs would either meet those standards and thereby be certified or would fail to meet those standards and therefore would not be available to enrollees.

Summary of Costs for Each Option

HHS notes that Option 1, which promotes uniformity, could produce a benefit of reduced Federal oversight cost; however this option would reduce innovation and therefore limit diffusion of successful policies and furthermore interfere with Exchange functions and needs. HHS also notes that while Option 2 could produce administrative burdens on Exchanges, this approach could reduce Exchanges' and QHP issuers' ability to innovate. These costs and benefits are discussed more fully in the detailed PRIA.

D. Accounting Statement

For full documentation and discussion of these estimated costs and benefits, see the detailed PRIA, available at *http://cciio.cms.gov* under ''Regulations and Guidance.''

Category	Primary estimate	Year dollar	Units discount rate	Period covered
Benefits				
Annualized Monetized ($millions/year)	Not estimated	2011	7%	2012–2016
	Not estimated	2011	3%	2012–2016
Qualitative	The Exchanges, combined with other actions being taken to implement the Affordable Care Act, will improve access to health insurance, with numerous positive effects, including earlier treatment and improved morbidity, fewer bankruptcies and decreased use of uncompensated care. The Exchange will also serve as a distribution channel for insurance reducing administrative costs as a part of premiums and providing comparable information on health plans to allow for a more efficient shopping experience.			
Costs				
Annualized Monetized ($millions/year)	424	2011	7%	2012–2016
	410	2011	3%	2012–2016
Qualitative	These costs include grant outlays to States to establish Exchanges.			

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The Act generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent.

As discussed above, this proposed rule is necessary to implement standards related to the Establishment of Exchanges and Qualified Health Plans as authorized by the Affordable Care Act. For purposes of the Regulatory Flexibility Analysis, we expect the following types of entities to be affected by this proposed rule: (1) QHP issuers; (2) agents and brokers; and (3) employers. We believe that health insurers and agents and brokers would be classified under the North American Industry Classification System (NAICS) Codes 524114 (Direct Health and Medical Insurance Carriers) and 524210 (Insurance Agencies and Brokers). According to SBA size standards, entities with average annual receipts of $7 million or less would be considered small entities for both of these NAICS codes. Health issuers could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be $10 million or less.

As discussed in the Web Portal interim final rule (75 FR 24481), HHS examined the health insurance industry in depth in the Regulatory Impact

Analysis we prepared for the proposed rule on establishment of the Medicare Advantage program (69 FR 46866, August 3, 2004). In that analysis we determined that there were few, if any, insurance firms underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) that fell below the size thresholds for ''small'' business established by the SBA (currently $7 million in annual receipts for health insurers, based on North American Industry Classification System Code 524114).[1]

Additionally, as discussed in the Medical Loss Ratio interim final rule (75 FR 74918), the Department used a data set created from 2009 National Association of Insurance Commissioners (NAIC) Health and Life Blank annual financial statement data to develop an updated estimate of the number of small entities that offer comprehensive major medical coverage in the individual and group markets. For purposes of that analysis, the Department used total Accident and Health (A&H) earned premiums as a proxy for annual receipts. The Department estimated that there were 28 small entities with less than $7 million in accident and health earned premiums offering individual or group comprehensive major medical coverage; however, this estimate may overstate the actual number of small health insurance issuers offering such coverage, since it does not include receipts from these companies' other lines of business.

As discussed earlier in this summary of the PRIA, the Department is seeking comments on the potential impacts of the requirements in this proposed regulation on issuers' administrative costs. The Department is also seeking comments relating to potential impacts on small issuers.

This rule proposes Exchange standards related to offering the QHPs. These standards and the associated certification process will impose costs on issuers, but these costs will vary depending on a number of factors, including the operating model chosen by the Exchange, their current accreditation status, and the variation between the proposed standards and current practice. Some QHP issuers will be more prepared to meet the standards than others and will incur fewer costs. For example, if data reporting functions required for certification already exist at the QHP issuer, there would be no additional cost. Exchanges also have the flexibility in some cases to set requirements. For example, the rule proposes discretion for Exchanges in setting network adequacy standards for participating health insurance issuers. The cost to the issuer will depend on whether the Exchange determines that compliance with relevant State law and licensure requirements is sufficient for a QHP issuer to participate in the Exchange or whether they decide to set additional standards in accordance with current provider market characteristics and consumer needs.

The cost of participating in an Exchange is an investment for QHP issuers, with benefits expected to accrue to QHP issuers. The Exchange will function as an important distribution channel for QHPs. QHP issuers currently fund their own sales and marketing efforts. As a centralized outlet to attract and enroll consumers, the Exchanges will supplement and reduce incremental health plan sales and marketing costs with their consumer assistance, education and outreach functions.

We anticipate that the agent and broker industry, which is comprised of large brokerage organizations, small groups, and independent agents, will play a critical role in enrolling qualified individuals in QHPs. We are proposing to codify Section 1312(e) of the Affordable Care Act, which gives States the option to permit agents or brokers to assist individuals enrolling in QHPs through the Exchange. Agents and brokers must meet any condition imposed by the State and, as a result, could incur costs. In addition, agents and brokers who become Navigators will also agree to comply with associated requirements and are likely to incur some costs. Because the States and the Exchanges will make these determinations, we cannot provide an estimate of the potential number of small entities that will be affected or the costs associated with these decisions.

This rule proposes requirements on employers that choose to participate in a SHOP. As discussed above, the SHOP is limited by statute to employers with at least one but not more than 100 employees. For this reason, we expect that many employers would meet the SBA Standard for Small entities. We do not believe that the proposed regulation imposes requirements on employers offering health insurance through SHOP that are more restrictive than the current requirements on employers offering employer sponsored health insurance. For this reason, we also believe the processes that we have proposed constitute the minimum amount of requirements necessary to implement statutory mandates and accomplish our policy goals, and that no appropriate regulatory alternatives could be developed to lessen the compliance burden. We also expect that for some employers, risk pooling and economies of scale will reduce the administrative cost of offering coverage through the SHOP and that they will, therefore, benefit from participation.

We request comment on whether the small entities affected by this rule have been fully identified. We also request comment and information on potential costs for these entities and on any alternatives that we should consider.

VI. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing proposed rule (and subsequent final rule) that includes any Federal mandate that may result in expenditures in any one year by a State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. Because States are not required to set up an Exchange, and because grants are available for funding of the establishment of an Exchange by a State, we anticipate that this proposed rule would not impose costs above that $136 million UMRA threshold on State, local, or tribal governments.

VII. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct costs on State and local governments, pre-empts State law, or otherwise has Federalism implications. Because States have flexibility in designing their Exchange, State decisions will ultimately influence both administrative expenses and overall premiums. States are not required to certify an Exchange. For States electing to create an Exchange, much of the initial costs to the creation of Exchanges will be funded by Exchange Planning and Establishment Grants. After this time, Exchanges will be financially self-sustaining with revenue sources at the discretion of the State. Current State Exchanges charge user fees to issuers.

In the Department's view, while this proposed rule does not impose substantial direct requirement costs on State and local governments, this

[1] ''Table of Size Standards Matched to North American Industry Classification System Codes,'' effective November 5, 2010, U.S. Small Business Administration, available at *http://www.sba.gov.*

proposed regulation has Federalism implications due to direct effects on the distribution of power and responsibilities among the State and Federal governments relating to determining standards relating to health insurance coverage (i.e., for QHPs) that is offered in the individual and small group markets. Each State electing to establish an Exchange must adopt the Federal standards contained in the Affordable Care Act and in this proposed rule, or have in effect a State law or regulation that implements these Federal standards. However, the Department anticipates that the Federalism implications (if any) are substantially mitigated because under the statute, States have choices regarding the structure and governance of their Exchanges. Additionally, the Affordable Care Act does not require States to certify an Exchange; if a State elects not to establish an Exchange or the State's Exchange is not approved, HHS, either directly or through agreement with a non-profit entity, must establish and operate an Exchange in that State.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policy making discretion of the States, the Department has engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners, and consulting with State insurance officials on an individual basis.

Throughout the process of developing this NPRM, the Department has attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide access to Affordable Insurance Exchanges for consumers in every State. By doing so, it is the Department's view that we have complied with the requirements of Executive Order 13132.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this regulation, the Department certifies that CMS has complied with the requirements of Executive Order 13132 for the attached proposed regulation in a meaningful and timely manner.

List of Subjects

45 CFR Part 155

Administrative practice and procedure, Advertising, Brokers, Conflict of interest, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs-health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, Safety, State and local governments, Technical assistance, Women, and Youth.

45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory committees, Brokers, Conflict of interest, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs-health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, Safety, State and local governments, Sunshine Act, Technical Assistance, Women, and Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR subtitle A, subchapter B, as set forth below:

SUBTITLE A—DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B—REQUIREMENTS RELATING TO HEALTH CARE ACCESS

1. Part 155 is added as follows:

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

Subpart A—General Provisions

Sec.

155.10 Basis and scope.
155.20 Definitions.

Subpart B—General Standards Related to the Establishment of an Exchange by a State

155.100 Establishment of a State Exchange.
155.105 Approval of a State Exchange.
155.106 Election to operate an Exchange after 2014.
155.110 Entities eligible to carry out Exchange functions.
155.120 Non-interference with Federal law and non-discrimination standards.
155.130 Stakeholder consultation.
155.140 Establishment of a regional Exchange or subsidiary Exchange.
155.150 Transition process for existing State health insurance exchanges.
155.160 Financial support for continued operations.

Subpart C—General Functions of an Exchange

155.200 Functions of an Exchange.
155.205 Required consumer assistance tools and programs of an Exchange.
155.210 Navigator program standards.
155.220 Ability of States to permit agents and brokers to assist qualified individuals, qualified employers or qualified employees enrolling in QHPs.
155.230 General standards for Exchange notices.
155.240 Payment of premiums.
155.260 Privacy and security of information.
155.270 Use of standards and protocols for electronic transactions.

Subpart E—Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans

155.400 Enrollment of qualified individuals into QHPs.
155.405 Single streamlined application.
155.410 Initial and annual open enrollment periods.
155.420 Special enrollment periods.
155.430 Termination of coverage.
155.440 [Reserved]

Subpart H—Exchange Functions: Small Business Health Options Program (SHOP)

155.700 Standards for the establishment of a SHOP.
155.705 Functions of a SHOP.
155.710 Eligibility standards for SHOP.
155.715 Eligibility determination process for SHOP.
155.720 Enrollment of employees into QHPs under SHOP.
155.725 Enrollment periods under SHOP.
155.730 Application standards for SHOP.

Subpart K—Exchange Functions: Certification of Qualified Health Plans

155.1000 Certification standards for QHPs.
155.1010 Certification process for QHPs.
155.1020 QHP issuer rate and benefit information.
155.1040 Transparency in coverage.
155.1045 Accreditation timeline.
155.1050 Establishment of Exchange network adequacy standards.
155.1055 Service area of a QHP.
155.1065 Stand-alone dental plans.
155.1075 Recertification of QHPs.
155.1080 Decertification of QHPs.

Authority: Title I of the Affordable Care Act, sections 1301, 1302, 1303, 1304, 1311, 1312, 1313, 1321, 1322, 1331, 1334, 1341, 1342, 1343, 1402, 1411, 1412–1413.

Subpart A—General Provisions

§ 155.10 Basis and scope.

(a) *Basis.* This part is based on the following sections of title I of the Affordable Care Act:

1301. Qualified health plan defined.
1302. Essential health benefits requirements
1303. Special rules
1304. Related definitions
1311. Affordable choices of health benefit plans.
1312. Consumer choice.

1313. Financial integrity.
1321. State flexibility in operation and enforcement of Exchanges and related requirements.
1322. Federal program to assist establishment and operation of nonprofit, member-run health insurance issuers.
1331. State flexibility to establish Basic Health Programs for low-income individuals not eligible for Medicaid.
1334. Multi-State plans.
1342. Establishment of risk corridors for plans in individual and small group markets.
1343. Risk adjustment.
1402. Reduced cost-sharing for individuals enrolling in QHPs.
1411. Procedures for determining eligibility for Exchange participation, advance premium tax credits and reduced cost sharing, and individual responsibility exemptions.
1412. Advance determination and payment of premium tax credits and cost-sharing reductions.
1413. Streamlining of procedures for enrollment through an exchange and State Medicaid, CHIP, and health subsidy programs.

(b) *Scope.* This part establishes minimum standards for the establishment of an Exchange, minimum Exchange functions, eligibility determinations, enrollment periods, minimum SHOP functions, certification of QHPs, and health plan quality improvement.

§ 155.20 Definitions.

The following definitions apply to this part:

Advance payments of the premium tax credit means payment of the tax credits specified in section 36B of the Code (as added by section 1401 of the Affordable Care Act) which are provided on an advance basis to an eligible individual of a QHP through an Exchange pursuant to sections 1402 and 1412 of the Affordable Care Act.

Affordable Care Act means the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152).

Agent or broker means a person or entity licensed by the State as an agent, broker or insurance producer.

Annual open enrollment period means the period each year during which a qualified individual may enroll or change coverage in a QHP through the Exchange.

Applicant means:

(1) An individual who is seeking eligibility through an application to the Exchange for at least one of the following:

(i) Enrollment in a QHP through the Exchange;

(ii) Advance payments of the premium tax credit and cost-sharing reductions; or

(iii) Medicaid, CHIP, and the BHP, if applicable.

(2) An employer or employee seeking eligibility for enrollment in a QHP through the SHOP, where applicable.

Benefit year means a calendar year for which a health plan provides coverage for health benefits.

Code means the Internal Revenue Code of 1986.

Cost sharing means any expenditure required by or on behalf of an enrollee with respect to essential health benefits; such term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance billing amounts for non-network providers, and spending for non-covered services.

Cost-sharing reductions means reductions in cost sharing for an eligible individual enrolled in a silver level plan in the Exchange or for an individual who is an Indian who is enrolled in a QHP in the Exchange.

Eligible employer-sponsored plan means, with respect to any employee, a group health plan or group health insurance coverage offered by an employer to the employee which is—

(1) A governmental plan (within the meaning of section 2791(d)(8) of the PHS Act); or

(2) Any other plan or coverage offered in the small or large group market within a State.

Such term shall include a grandfathered health plan offered in the group market.

Employee has the meaning given to the term in section 2791 of the PHS Act.

Employer has the meaning given to the term in section 2791 of the PHS Act, except that such term must include employers with one or more employees. All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Code must be treated as one employer.

Employer contributions means any financial contributions towards an employer sponsored health plan, or other eligible employer-sponsored benefit made by the employer including those made by salary reduction agreement that is excluded from gross income.

Enrollee means a qualified individual or qualified employee enrolled in a QHP.

Exchange means a governmental agency or non-profit entity that meets the applicable requirements of this part and makes QHPs available to qualified individuals and qualified employers. Unless otherwise identified, this term refers to State Exchanges, regional Exchanges, subsidiary Exchanges, and a Federally-facilitated Exchange.

Exchange service area means the area in which the Exchange is certified to operate, in accordance with the requirements specified in subpart B of this part.

Grandfathered health plan means coverage provided by a group health plan, or a health insurance issuer as provided in accordance with requirements under § 147.140.

Group health plan has the meaning given to the term in § 144.103.

Health insurance coverage has the meaning given to the term in § 144.103.

Health insurance issuer or *issuer* has the meaning given to the term in § 144.103.

Health plan means health insurance coverage and a group health plan. It does not include a group health plan or multiple employer welfare arrangement to the extent the plan or arrangement is not subject to State insurance regulation under section 514 of the Employee Retirement Income Security Act of 1974.

Individual market means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

Initial enrollment period means the period during which a qualified individual may enroll in coverage through the Exchange for coverage during the 2014 benefit year.

Large employer means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 101 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. In the case of plan years beginning before January 1, 2016, a State may elect to define large employer by substituting ''51 employees'' for ''101 employees.''

Lawfully present has the meaning given the term in § 152.2 of this subtitle.

Minimum essential coverage has the meaning given in section 5000A(f) of the Code.

Navigator means a private or public entity or individual that is qualified, and licensed, if appropriate, to engage in the activities and meet the requirements described in § 155.210.

Plain language means language that the intended audience, including individuals with limited English proficiency, can readily understand and use because that language is concise, well organized, and follows other best practices of plain language writing.

Plan year means a consecutive 12 month period during which a health plan provides coverage for health

benefits. A plan year may be a calendar year or otherwise.

Qualified employee means an individual employed by a qualified employer who has been offered health insurance coverage by such qualified employer through the SHOP.

Qualified employer means a small employer that elects to make, at a minimum, all full-time employees of such employer eligible for one or more QHPs in the small group market offered through a SHOP. Beginning in 2017, if a State allows large employers to purchase coverage through the SHOP, the term ''qualified employer'' shall include a large employer that elects to make all full-time employees of such employer eligible for one or more QHPs in the large group market offered through the SHOP.

Qualified health plan or *QHP* means a health plan that has in effect a certification that it meets the standards described in subpart C of part 156 issued or recognized by each Exchange through which such plan is offered pursuant to the process described in subpart K of part 155.

Qualified health plan issuer or *QHP issuer* means a health insurance issuer that offers, pursuant to a certification from an Exchange, a QHP.

Qualified individual means, with respect to an Exchange, an individual who has been determined eligible to enroll in a QHP in the individual market offered through the Exchange.

SHOP means a Small Business Health Options Program operated by an Exchange through which a qualified employer can provide its employees and their dependents with access to one or more QHPs.

Small employer means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. In the case of plan years beginning before January 1, 2016, a State may elect to define small employer by substituting ''50 employees'' for ''100 employees.''

Small group market means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer (as defined in this section).

Special enrollment period means a period during which a qualified individual or enrollee who experiences certain qualifying events may enroll in, or change enrollment in, a QHP through the Exchange outside of the initial and annual open enrollment periods.

State means each of the 50 States and the District of Columbia.

Subpart B—General Standards Related to the Establishment of an Exchange by a State

§ 155.100 Establishment of a State Exchange.

(a) *General requirements.* Each State may elect to establish an Exchange that facilitates the purchase of health insurance coverage in QHPs and provides for the establishment of a SHOP.

(b) *Eligible Exchange entities.* The Exchange must be a governmental agency or non-profit entity established by a State, consistent with § 155.110.

§ 155.105 Approval of a State Exchange.

(a) *State Exchange approval requirement.* Each State Exchange must be approved by HHS by no later than January 1, 2013 in order to begin offering QHPs on January 1, 2014.

(b) *State Exchange approval standards.* HHS will approve the operation of an Exchange established by a State provided that it meets the following standards:

(1) The Exchange is able to carry out the required functions of an Exchange consistent with subparts C, E, H, and K of this part;

(2) The Exchange is capable of carrying out the information requirements pursuant to section 36B of the Code;

(3) The State agrees to perform the responsibilities related to the operation of a reinsurance program pursuant to standards set forth in part 153 of this chapter; and

(4) The entire geographic area of the State is covered by one or more State Exchanges.

(c) *State Exchange approval process.* In order to have its Exchange approved, a State must:

(1) Elect to establish an Exchange by submitting, in a form and manner specified by HHS, an Exchange Plan that sets forth how the Exchange meets the standards outlined in paragraph (b) of this section; and

(2) Demonstrate operational readiness to execute its Exchange Plan through a readiness assessment conducted by HHS.

(d) *State Exchange approval.* Each Exchange must receive written approval or conditional approval of its Exchange Plan and its performance under the operational readiness assessment consistent with paragraph (c) of this section in order to be considered an approved Exchange.

(e) *Significant changes to Exchange Plan.* The State must notify HHS in writing before making a significant change to its Exchange Plan; no significant change to an Exchange Plan may be effective until it is approved by HHS in writing.

(f) *HHS operation of an Exchange.* If a State is not an electing State under § 155.100(a) or an electing State does not have an approved or conditionally approved Exchange by January 1, 2013, HHS must (directly or through agreement with a not-for-profit entity) establish and operate such Exchange within the State. In the case of a Federally-facilitated Exchange, the requirements in § 155.130 and subparts C, E, H, and K of this part will apply.

§ 155.106 Election to operate an Exchange after 2014.

(a) *Election to operate an Exchange after 2014.* A State electing to seek initial approval of its Exchange later than January 1, 2013 must:

(1) Comply with the State Exchange approval requirements and process set forth in § 155.105;

(2) Have in effect an approved, or conditionally approved, Exchange Plan and operational readiness assessment at least 12 months prior to the Exchange's first effective date of coverage; and

(3) Develop a plan jointly with HHS to facilitate the transition from a Federally-facilitated Exchange to a State Exchange.

(b) *Transition process for State Exchanges that cease operations.* A State that ceases operations of its Exchange after January 1, 2014 must:

(1) Notify HHS that it will no longer operate an Exchange at least 12 months prior to ceasing operations; and

(2) Coordinate with HHS on a transition plan to be developed jointly between HHS and the State.

§ 155.110 Entities eligible to carry out Exchange functions.

(a) *Eligible contracting entities.* The State may elect to authorize an Exchange established by the State to enter into an agreement with an eligible entity to carry out one or more responsibilities of the Exchange. Eligible entities are:

(1) An entity:

(i) Incorporated under, and subject to the laws of, one or more States;

(ii) That has demonstrated experience on a State or regional basis in the individual and small group health insurance markets and in benefits coverage; and

(iii) Is not a health insurance issuer or treated as a health insurance issuer

under subsection (a) or (b) of section 52 of the Code of 1986 as a member of the same controlled group of corporations (or under common control with) as a health insurance issuer; or

(2) The State Medicaid agency.

(b) *Responsibility.* To the extent that an Exchange establishes such arrangements, the Exchange remains responsible for ensuring that all Federal requirements related to contracted functions are met.

(c) *Governing board structure.* If the Exchange is an independent State agency or a non-profit entity established by the State, the State must ensure that the Exchange has in place a clearly-defined governing board that:

(1) Is administered under a formal, publicly-adopted operating charter or by-laws;

(2) Holds regular public governing board meetings that are announced in advance;

(3) Represents consumer interests by ensuring that overall governing board membership is not made up of a majority of voting representatives with a conflict of interest, including representatives of health insurance issuers or agents or brokers, or any other individual licensed to sell health insurance; and

(4) Ensures that a majority of the voting members on its governing board have relevant experience in health benefits administration, health care finance, health plan purchasing, health care delivery system administration, public health, or health policy issues related to the small group and individual markets and the uninsured.

(d) *Governance principles.*

(1) The Exchange must have in place and make publicly available a set of guiding governance principles that include ethics, conflict of interest standards, accountability and transparency standards, and disclosure of financial interest.

(2) The Exchange must implement procedures for disclosure of financial interests by members of the Exchange board or governance structure.

(e) *SHOP independent governance.*

(1) A State may elect to create an independent governance and administrative structure for the SHOP, consistent with this section, if the State ensures that the SHOP coordinates and shares relevant information with the Exchange operating in the same service area.

(2) If a State chooses to operate its Exchange and SHOP under a single governance or administrative structure, it must ensure that the Exchange has adequate resources to assist individuals and small employers in the Exchange.

(f) *HHS review.* HHS may periodically review the accountability structure and governance principles of a State Exchange.

§ 155.120 Non-interference with Federal law and non-discrimination standards.

(a) *Non-interference with Federal law.* An Exchange must not establish rules that conflict with or prevent the application of regulations promulgated by HHS under subtitle D of title I of the Affordable Care Act.

(b) *Non-interference with State law.* Nothing in parts 155 or 156 of this subtitle shall be construed to preempt any State law that does not prevent the application of the provisions of title I of the Affordable Care Act.

(c) *Non-discrimination.* In carrying out the requirements of this part, the State and the Exchange must:

(1) Comply with applicable non-discrimination statutes; and

(2) Not discriminate based on race, color, national origin, disability, age, sex, gender identity or sexual orientation.

§ 155.130 Stakeholder consultation.

The Exchange must regularly consult on an ongoing basis with the following stakeholders:

(a) Educated health care consumers who are enrollees in QHPs;

(b) Individuals and entities with experience in facilitating enrollment in health coverage;

(c) Advocates for enrolling hard to reach populations, which include individuals with a mental health or substance abuse disorder;

(d) Small businesses and self-employed individuals;

(e) State Medicaid and CHIP agencies;

(f) Federally-recognized Tribes, as defined in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a, that are located within such Exchange's geographic area;

(g) Public health experts;

(h) Health care providers;

(i) Large employers;

(j) Health insurance issuers; and

(k) Agents and brokers.

§ 155.140 Establishment of a regional Exchange or subsidiary Exchange.

(a) *Regional Exchange.* A State may participate in a regional Exchange if:

(1) The Exchange spans two or more States, regardless of whether the States are contiguous; and

(2) The regional Exchange submits a single Exchange Plan and is approved to operate consistent with § 155.105(c).

(b) *Subsidiary Exchange.* A State may establish one or more subsidiary Exchanges within the State if:

(1) Each such Exchange serves a geographically distinct area; and

(2) The area served by each subsidiary Exchange is at least as large as a rating area described in section 2701(a) of the PHS Act.

(c) *Exchange standards.* Each regional or subsidiary Exchange must:

(1) Otherwise meet the requirements of an Exchange consistent with this part; and

(2) Meet the following standards for SHOP:

(i) Perform the functions of a SHOP for its area in accordance with subpart H of this part; and

(ii) If a State elects to operate its individual market Exchange and SHOP under two governance or administrative structures as described in § 155.110(e), the SHOP must encompass a geographic area that matches the geographic area of the regional or subsidiary Exchange.

§ 155.150 Transition process for existing State health insurance exchanges.

(a) *Presumption.* Unless an exchange is determined to be non-compliant through the process in paragraph (b) of this section, HHS will otherwise presume that an existing State Exchange meets the standards under this part if:

(1) The Exchange was in operation prior to January 1, 2010; and

(2) The State has insured a percentage of its population not less than the percentage of the population projected to be covered nationally after the implementation of the Affordable Care Act.

(b) *Process for determining non-compliance.* Any State described in paragraph (a) must work with HHS to identify areas of non-compliance with the standards under this part.

§ 155.160 Financial support for continued operations.

(a) *Definition.* For purposes of this section, participating issuers has the meaning provided in § 156.50.

(b) *Funding for ongoing operations.* A State must ensure that its Exchange has sufficient funding in order to support its ongoing operations beginning January 1, 2015, as follows:

(1) The State may fund Exchange operations by charging assessments or user fees on participating issuers;

(2) States may otherwise generate funding for Exchange operations;

(3) No Federal funds will be provided for State Exchange operations after January 1, 2015; and

(4) The State Exchange must announce the user fees to participating issuers in advance of the plan year.

Subpart C—General Functions of an Exchange

§ 155.200 Functions of an Exchange.

(a) *General requirements.* The Exchange must perform the minimum functions described in this subpart and in subparts E, H, and K of this part.

(b) *Certificates of exemption.* The Exchange must issue certificates of exemption consistent with section 1311(d)(4)(H) and 1411 of the Affordable Care Act.

(c) *Eligibility determinations.* The Exchange must perform eligibility determinations.

(d) *Appeals of individual eligibility determinations.* The Exchange must establish an appeals process for eligibility determinations.

(e) *Oversight and financial integrity.* The Exchange must perform required functions related to oversight and financial integrity requirements in accordance with section 1313 of the Affordable Care Act.

(f) *Quality Activities.* The Exchange must evaluate quality improvement strategies and oversee implementation of enrollee satisfaction surveys, assessment and ratings of health care quality and outcomes, information disclosures, and data reporting pursuant to sections 1311(c)(1), 1311(c)(3), and 1311(c)(4) of the Affordable Care Act.

§ 155.205 Required consumer assistance tools and programs of an Exchange.

(a) *Call center.* The Exchange must provide for operation of a toll-free call center that addresses the needs of consumers requesting assistance.

(b) *Internet Web site.* The Exchange must maintain an up-to-date Internet Web site that:

(1) Provides standardized comparative information on each available QHP, including at a minimum:

(i) Premium and cost-sharing information;

(ii) The summary of benefits and coverage established under section 2715 of the PHS Act;

(iii) Identification of whether the QHP is a bronze, silver, gold, or platinum level plan as defined by section 1302(d) of the Affordable Care Act, or a catastrophic plan as defined by section 1302(e) of the Affordable Care Act;

(iv) The results of enrollee satisfaction survey, described in section 1311(c)(4) of the Affordable Care Act;

(v) Quality ratings assigned pursuant to section 1311(c)(3) of the Affordable Care Act;

(vi) Medical loss ratio information as reported to HHS in accordance with 45 CFR 158;

(vii) Transparency of coverage measures reported to the Exchange during certification in § 155.1040; and

(viii) The provider directory made available to the Exchange pursuant to § 156.230.

(2) Is accessible to people with disabilities in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act and provides meaningful access for persons with limited English proficiency.

(3) Publishes the following financial information:

(i) The average costs of licensing required by the Exchange;

(ii) Any regulatory fees required by the Exchange;

(iii) Any payments required by the Exchange in addition to fees under (i) and (ii) of this paragraph;

(iv) Administrative costs of such Exchange; and

(v) Monies lost to waste, fraud, and abuse.

(4) Provides applicants with information about Navigators as described in § 155.210 and other consumer assistance services, including the toll-free telephone number of the Exchange call center required in paragraph (a) of this section.

(5) Allows for an eligibility determination to be made pursuant to § 155.200(c) of this subpart.

(6) Allows for enrollment in coverage in accordance with subpart E of this part.

(c) *Exchange calculator.* The Exchange must establish and make available by electronic means a calculator to facilitate the comparison of available QHPs after the application of any advance payments of the premium tax credit and any cost-sharing reductions.

(d) *Consumer assistance.* The Exchange must have a consumer assistance function, including the Navigator program described in § 155.210, and must refer consumers to consumer assistance programs in the State when available and appropriate.

(e) *Outreach and education.* The Exchange must conduct outreach and education activities to educate consumers about the Exchange and to encourage participation.

§ 155.210 Navigator program standards.

(a) *General Requirements.* The Exchange must establish a Navigator program consistent with this section through which it awards grants to eligible public or private entities described in paragraph (b) of this section.

(b) *Entities eligible to be a Navigator.*

(1) To receive a Navigator grant, an entity must—

(i) Be capable of carrying out at least those duties described in paragraph (d) of this section;

(ii) Demonstrate to the Exchange that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be eligible for enrollment in a QHP;

(iii) Meet any licensing, certification or other standards prescribed by the State or Exchange, if applicable; and

(iv) Not have a conflict of interest during the term as Navigator.

(2) The Exchange must include entities from at least two of the following categories for receipt of a Navigator grant:

(i) Community and consumer-focused nonprofit groups;

(ii) Trade, industry, and professional associations;

(iii) Commercial fishing industry organizations, ranching and farming organizations;

(iv) Chambers of commerce;

(v) Unions;

(vi) Resource partners of the Small Business Administration;

(vii) Licensed agents and brokers; and

(viii) Other public or private entities that meet the requirements of this section. Other entities may include but are not limited to Indian tribes, tribal organizations, urban Indian organizations, and State or local human service agencies.

(c) *Prohibition on Navigator conduct.* The Exchange must ensure that a Navigator must not—

(1) Be a health insurance issuer; or

(2) Receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any qualified individuals or qualified employees in a QHP.

(d) *Duties of a Navigator.* An entity that serves as a Navigator must carry out at least the following duties:

(1) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the Exchange;

(2) Provide information and services in a fair, accurate and impartial manner. Such information must acknowledge other health programs;

(3) Facilitate enrollment in QHPs;

(4) Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the PHS Act, or any other appropriate State agency or agencies, for any enrollee with a grievance,

complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and

(5) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange, including individuals with limited English proficiency, and ensure accessibility and usability of Navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

(e) *Funding for Navigator grants.* Funding for Navigator grants may not be from Federal funds received by the State to establish the Exchange.

§ 155.220 Ability of States to permit agents and brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs.

(a) *General rule.* A State may choose to permit agents and brokers to—

(1) Enroll qualified individuals, qualified employers or qualified employees in any QHPs in the individual or small group market as soon as the QHP is offered through an Exchange in the State; and

(2) Assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs.

(b) *Web site disclosure.* The Exchange may elect to provide information regarding licensed agents and brokers on its Web site for the convenience of consumers seeking insurance through that Exchange.

§ 155.230 General standards for Exchange notices.

(a) *General requirement.* Any notice required to be sent by an Exchange to applicants, qualified individuals, qualified employees, qualified employers, and enrollees must be in writing and include:

(1) Contact information for available customer service resources;

(2) An explanation of appeal rights, if applicable; and

(3) A citation to or identification of the specific regulation supporting the action.

(b) *Accessibility and readability requirements.* All applications, forms, and notices must be written in plain language and provided in a manner that:

(1) Provides meaningful access to limited English proficient individuals; and

(2) Ensures effective communication for people with disabilities.

(c) *Re-evaluation of appropriateness and usability.* The Exchange must re-evaluate the appropriateness and usability of applications, forms, and notices on an annual basis and in consultation with HHS in instances when changes are made.

§ 155.240 Payment of premiums.

(a) *Payment by individuals.* The Exchange must allow a qualified individual to pay any applicable premium owed by such individual directly to the QHP issuer.

(b) *Payment by tribes, tribal organizations, and urban Indian organizations.* The Exchange may permit Indian tribes, tribal organizations and urban Indian organizations to pay QHP premiums on behalf of qualified individuals, subject to terms and conditions determined by the Exchange.

(c) *Payment by qualified employers.* The Exchange must accept payment of an aggregate premium by a qualified employer pursuant to § 155.705(b)(4).

(d) *Payment facilitation.* The Exchange may establish a process to facilitate through electronic means the collection and payment of premiums.

(e) *Required standards.* In conducting an electronic transaction with a QHP that involves the payment of premiums or an electronic funds transfer, the Exchange must use the standards and operating rules referenced in § 155.260 and § 155.270.

§ 155.260 Privacy and security of information.

(a) *Definitions.* For purposes of this section, the following term has the following meaning:

Personally identifiable information means information that there is a reasonable basis to believe, alone or when combined with other personal or identifying information which is linked or linkable to a specific individual, can be used to distinguish or trace an individual's identity. Specifically, the term applies to information collected, received or used by the Exchange as part of its operations.

(b) *Use and disclosure.*

(1) The Exchange must not collect, use, or disclose personally identifiable information unless:

(i) The collection, use, or disclosure is specifically required or permitted by this section or by other applicable law; or

(ii) The collection, use, or disclosure is made pursuant to subpart E of this part, while the Exchange is fulfilling its responsibilities in accordance with § 155.200(c) of this subpart, or pursuant to section 1942(b) of the Act as described in paragraph (c) of this section.

(2) Exchanges must establish and follow security standards for collection, use, disclosure and disposal of personally identifiable information that provide administrative, physical, and technical safeguards for the information that are consistent with the security standards required for covered entities by 45 CFR 164.306, 164.308, 164.310, 164.312 and 164.314.

(3) Exchanges must establish and follow privacy standards consistent with applicable law and that establish acceptable parameters for proper collection, use, disclosure and disposal of personally identifiable information.

(4) Policies and procedures regarding the use, disclosure and disposal of personally identifiable information must, at minimum:

(i) Be in writing, and available to the Secretary of HHS upon request;

(ii) Identify applicable law governing use, disclosure and disposal of personally identifiable information; and

(5) In any contract or agreement with a contractor, require that personally identifiable information provided to, created by, received by, used by, or subsequently disposed of by a contractor of the Exchange or any of its subcontractors, pursuant to an agreement with the Exchange or on behalf of the Exchange, be protected by privacy and security standards that are the same as or more stringent than those described in this section.

(c) *Other applicable law.* Data matching and sharing arrangements made between the Exchange and agencies administering Medicaid, CHIP or the BHP for the exchange of eligibility information must be consistent with other applicable laws, including section 1942 of the Act.

(d) *Compliance with the Code.* Tax returns and return information must be kept confidential and disclosed only in accordance with section 6103(l)(21) of the Code.

(e) *Improper use and disclosure of information.* Any person who knowingly and willfully uses or discloses information in violation of section 1411(g) of the Affordable Care Act will be subject to a civil penalty of not more than $25,000 per person or entity, per disclosure, in addition to other penalties that may be prescribed by law.

§ 155.270 Use of standards and protocols for electronic transactions.

(a) *HIPAA administrative simplification.* To the extent that the Exchange performs electronic transactions with a covered entity, the Exchange must use standards, implementation specifications and code sets adopted by the Secretary in 45 CFR parts 160 and 162.

(b) *HIT enrollment standards and protocols.* The Exchange must incorporate interoperable and secure standards and protocols developed by the Secretary pursuant to section 3021 of the PHS Act. Such standards and protocols must be incorporated within Exchange information technology systems.

Subpart E—Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans

§ 155.400 Enrollment of qualified individuals into QHPs.

(a) *General requirements.* The Exchange must accept a QHP selection from an applicant who is determined eligible for enrollment in a QHP in accordance with the standards established in accordance with § 155.200(c) of this subpart, and must—

(1) Notify the issuer of the applicant's selected QHP; and

(2) Transmit information necessary to enable the QHP issuer to enroll the applicant.

(b) *Timing of data exchange.* The Exchange must:

(1) Send eligibility and enrollment information to QHP issuers on a timely basis; and

(2) Establish a process by which a QHP issuer verifies and acknowledges the receipt of such information.

(c) *Records.* The Exchange must maintain records of all enrollments in QHPs through the Exchange and submit enrollment information to HHS on a monthly basis.

(d) *Reconcile files.* The Exchange must reconcile enrollment information with QHP issuers no less than on a monthly basis.

§ 155.405 Single streamlined application.

(a) *The application.* The Exchange must use a single streamlined application to determine eligibility and to collect information necessary for enrollment for—

(1) QHPs;

(2) Advance payments of the premium tax credit;

(3) Cost-sharing reductions; and

(4) Medicaid, CHIP, or the BHP, where applicable.

(b) *Alternative application.* If the Exchange seeks to use an alternative application, such application, as approved by HHS, must request the minimum information necessary for the purposes identified in paragraph (a) of this section.

(c) *Filing the single streamlined application.* The Exchange must—

(1) Accept the single streamlined application from

(i) An applicant;

(ii) An authorized representative; or,

(iii) Someone acting responsibly for the applicant.

(2) Provide the tools to allow for an applicant to file an application—

(i) Via an Internet portal;

(ii) By telephone through a call center;

(iii) By mail; and

(iv) In person.

(d) [Reserved]

(e) [Reserved]

§ 155.410 Initial and annual open enrollment periods.

(a) *General requirements.*

(1) The Exchange must provide an initial open enrollment period and annual open enrollment periods consistent with this section, during which qualified individuals may enroll in a QHP or enrollees may change QHPs.

(2) The Exchange may only permit a qualified individual to enroll in a QHP or an enrollee to change QHPs during the initial open enrollment period specified in paragraph (b) of this section, the annual open enrollment period specified in paragraph (e) of this section, or a special enrollment period described in § 155.420 of this subpart for which the qualified individual or enrollee has been determined eligible.

(b) *Initial open enrollment period.* The initial open enrollment period begins October 1, 2013 and extends through February 28, 2014.

(c) *Effective coverage dates for initial open enrollment period.* For QHP selections received by the Exchange from a qualified individual—

(1) On or before December 22, 2013, the Exchange must ensure a coverage effective date of January 1, 2014; and

(2) Between the first and twenty-second day of any subsequent month during the initial open enrollment period, the Exchange must ensure a coverage effective date of the first day of the following month; and

(3) Between the twenty-third and last day of the month for any month between December 2013 and February 28, 2014, the Exchange must ensure a coverage effective date of either the first day of the following month or the first day of the second following month.

(d) *Notice of annual open enrollment period.* Starting in 2014, the Exchange must provide advance written notification to each enrollee about annual open enrollment.

(e) *Annual open enrollment period.* For benefit years beginning on or after January 1, 2015, the annual open enrollment period begins October 15 and extends through December 7 of the preceding calendar year.

(f) *Effective date for coverage after the annual open enrollment period.* The Exchange must ensure coverage is effective as of the first day of the following benefit year for a qualified individual who has made a QHP selection during the annual open enrollment period.

(g) [Reserved]

§ 155.420 Special enrollment periods.

(a) *General requirements.* The Exchange must provide special enrollment periods consistent with this section, during which qualified individuals and enrollees may enroll in QHPs or change enrollment from one QHP to another.

(b) *Effective dates.* Once a qualified individual is determined eligible for a special enrollment period, the Exchange must ensure that the qualified individual's effective date of coverage is:

(1) On the first day of the following month for all QHP selections made by the 22nd of the previous month,

(2) On either the first day of the following month or the first day of the second following month for all QHP selections made between the 23rd and last day of a given month, or

(3) In the case of birth, adoption or placement for adoption effective on the date of birth, adoption, or placement for adoption.

(c) *Length of special enrollment periods.* Unless specifically stated otherwise herein, a qualified individual or enrollee has 60 days from the date of a triggering event to select a qualified health plan.

(d) *Special enrollment periods.* The Exchange must allow qualified individuals and enrollees to enroll in or change from one QHP to another as a result of the following triggering events:

(1) A qualified individual or dependent loses minimum essential coverage;

(2) A qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption or placement for adoption;

(3) An individual, who was not previously a citizen, national, or lawfully present individual gains such status;

(4) A qualified individual's enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange. In such cases, the Exchange may take such action as may be necessary to correct or

eliminate the effects of such error, misrepresentation, or inaction;

(5) An enrollee adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the individual;

(6) An individual is determined newly eligible or newly ineligible for advance payments of the premium tax credit or has a change in eligibility for cost-sharing reductions, regardless of whether such individual is already enrolled in a QHP. The Exchange must permit an individual whose existing coverage through an eligible employer-sponsored plan will no longer be affordable or provide minimum value for his or her employer's upcoming plan year to access this special enrollment period prior to the end of his or her coverage through such eligible employer-sponsored plan;

(7) A qualified individual or enrollee gains access to new QHPs as a result of a permanent move;

(8) An Indian, as defined by section 4 of the Indian Health Care Improvement Act, may enroll in a QHP or change from one QHP to another 1 time per month; and

(9) A qualified individual or enrollee meets other exceptional circumstances as the Exchange or HHS may provide.

(e) *Loss of coverage.* Loss of coverage does not include termination or loss due to—

(1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR 147.128, Rules Regarding Rescissions.

(f) *Limits on special enrollment periods.* An enrollee may only move to a different plan at the same level of coverage, as described in section 1302(d)(1) of the Affordable Care Act, excluding paragraph (d)(6) of this section.

§ 155.430 Termination of coverage.

(a) *General requirements.* The Exchange must determine the form and manner in which coverage in a QHP may be terminated.

(b) *Termination events.*

(1) The Exchange must permit an enrollee to terminate his or her coverage in a QHP with appropriate notice to the Exchange or the QHP.

(2) The Exchange may terminate an enrollee's coverage in a QHP, and must permit a QHP issuer to terminate such coverage, in the following circumstances:

(i) The enrollee is no longer eligible for coverage in a QHP through the Exchange;

(ii) The enrollee becomes covered in other minimum essential coverage;

(iii) Payments of premiums for coverage of the enrollee cease, provided that the grace period required by § 156.270 of this subtitle has expired;

(iv) The enrollee's coverage is rescinded in accordance with § 147.128 of this subtitle;

(v) The QHP terminates or is decertified as described in § 155.1080; or

(vi) The enrollee changes from one QHP to another during an annual open enrollment period or special enrollment period in accordance with § 155.410 or § 155.420.

(c) *Termination of coverage tracking and approval.* The Exchange must—

(1) Establish mandatory procedures for issuers of QHPs to maintain records of termination of coverage;

(2) Track number of coverage terminations and submit that information to HHS on a monthly basis;

(3) Establish standards for termination of coverage that require issuers of QHPs to provide reasonable accommodations to individuals with mental or cognitive conditions, including mental and substance use disorders, Alzheimer's disease, and developmental disabilities before terminating coverage for such individuals; and

(4) Retain records in order to facilitate audit functions.

(d) *Effective dates for termination of coverage.*

(1) In the case of a termination in accordance with paragraph (b)(1) of this section, the last day of coverage is the termination date specified by the enrollee, if the Exchange and QHP have a reasonable amount of time from the date on which the enrollee provides notice to terminate his or her coverage. If the Exchange or the QHP do not have a reasonable amount of time from the date on which the enrollee provides notice to terminate his or her coverage, the last day of coverage is the first day after such reasonable amount of time has passed.

(2) In the case of a termination in accordance with paragraph (b)(2)(ii) of this section, the last day of coverage is the day before the effective date of an enrollee's coverage for new minimum essential coverage.

(3) In the case of a termination in accordance with paragraph (b)(2)(vi) of this section, the last day of coverage in an enrollee's prior QHP is the day before the effective date of coverage in his or her new QHP.

(4) In cases other than those described in paragraphs (d)(1)–(3) of this section, the last day of coverage is:

(i) The fourteenth day of the month if the notice of termination is sent by the Exchange or termination is initiated by the QHP no later than the fourteenth day of the previous month; or

(ii) The last day of the month if the notice of termination is sent by the Exchange or termination is initiated by the QHP no later than the last day of the previous month.

§ 155.440 [Reserved]

Subpart H—Exchange Functions: Small Business Health Options Program (SHOP)

§ 155.700 Standards for the establishment of a SHOP.

General requirement. An Exchange must provide for the establishment of a SHOP that meets the requirements of this subpart and is designed to assist qualified employers and facilitate the enrollment of qualified employees into qualified health plans.

§ 155.705 Functions of a SHOP.

(a) *Exchange functions that apply to SHOP.* The SHOP must carry out all the required functions of an Exchange described in this subpart and in subparts C, E, H, and K of this part, except:

(1) Requirements related to individual eligibility determinations in § 155.200(c) and appeals of such determinations in § 155.200(d).

(2) Requirements related to enrollment of qualified individuals described in subpart E of this part;

(3) The requirement to create a premium tax credit calculator pursuant to § 155.205(c);

(4) The requirement to certify exemptions from the individual coverage requirement pursuant to § 155.200(b);

(5) Requirements related to the payment of premiums by individuals, Indian tribes, tribal organizations and urban Indian organizations under § 155.240.

(b) *Unique functions of a SHOP.* The SHOP must also provide the following unique functions:

(1) *Enrollment and eligibility functions.* The SHOP must adhere to the requirements outlined in §§ 155.710, 155.715, 155.720, 155.725, and 155.730. In addition, the SHOP must at a minimum facilitate the special enrollment periods described in § 156.285(b)(2) of this subtitle.

(2) *Employer choice requirements.* With regard to QHPs offered through the SHOP, the SHOP must allow a qualified

employer to select a level of coverage as described in section 1302(d)(1) of the Affordable Care Act, in which all QHPs within that level are made available to the qualified employees of the employer.

(3) *SHOP options with respect to employer choice requirements.* With regard to QHPs offered through the SHOP, the SHOP may allow a qualified employer to make one or more QHPs available to qualified employees by a method other than the method described in paragraph (b)(2) of this section.

(4) *Premium aggregation.* The SHOP must perform the following functions related to premium payment administration:

(i) Provide each qualified employer with a bill on a monthly basis that identifies the total amount that is due to the QHP issuers from the qualified employer; and

(ii) Collect from each employer the total amount due and make payments to QHP issuers in the SHOP for all qualified enrollees.

(5) *QHP Certification.* With respect to certification of QHPs in the small group market, the SHOP must ensure QHPs meet the requirements specified in § 156.285 of this subtitle.

(6) *Rates and rate changes.* The SHOP must—

(i) Require all QHP issuers to make any change to rates at a uniform time that is either quarterly, monthly, or annually; and

(ii) Not vary rates for a qualified employer during its plan year.

(7) *QHP availability in merged markets.* If a State merges the individual market and the small group market risk pools pursuant to section 1312(c)(3) of the Affordable Care Act, the SHOP may permit a qualified employee to enroll in any QHP meeting the following requirements of the small group market:

(i) Deductible maximums described in section 1302(c) of the Affordable Care Act; and

(ii) Levels of coverage described in § 155.705(b)(2).

(8) *QHP availability in unmerged markets.* If a State does not merge the individual and small group market risk pools, the SHOP must permit each qualified employee to enroll only in QHPs in the small group market.

(9) *SHOP expansion to large group market.* If a State elects to expand the SHOP to the large group market, a SHOP must allow issuers of health insurance coverage in the large group market in the State to offer QHPs in such market through a SHOP beginning in 2017, provided that a large employer meets the qualified employer requirements by electing to make all full-time employees of such employer eligible for one or more QHPs offered in the large group market through a SHOP.

§ 155.710 Eligibility standards for SHOP.

(a) *General requirement.* The SHOP must permit qualified employers to purchase coverage for qualified employees through the SHOP.

(b) *Employer eligibility requirements.* An employer is a qualified employer eligible to purchase coverage through a SHOP if such employer—

(1) Is a small employer;

(2) Elects to offer, at a minimum, all full-time employees coverage in a QHP through a SHOP; and

(3) Either—

(i) Has its principal business address in the Exchange service area and offers coverage to all its employees through that SHOP; or

(ii) Offers coverage to each eligible employee through the SHOP serving that employee's primary worksite.

(c) *Participating in multiple SHOPs.* If an employer meets the criteria in (b) above and makes the election described in paragraph (b)(3)(ii) of this section, a SHOP shall allow the employer to offer coverage to those employees whose primary worksite is in the SHOP's service area.

(d) *Continuing eligibility.* The SHOP must treat a qualified employer which ceases to be a small employer solely by reason of an increase in the number of employees of such employer as a qualified employer until the qualified employer otherwise fails to meet the eligibility criteria of this section or elects to no longer purchase coverage for qualified employees through the SHOP.

(e) *Employee eligibility requirements.* An employee is a qualified employee eligible to enroll in coverage through a SHOP if such employee receives an offer of coverage from a qualified employer.

§ 155.715 Eligibility determination process for SHOP.

(a) *General requirement.* Before permitting the purchase of coverage in a QHP, the SHOP must determine that the employer or individual who requests coverage is eligible in accordance with the requirements of § 155.710.

(b) *Applications.* The SHOP must accept a SHOP single employer application form from employers and the SHOP single employee application form from employees wishing to elect coverage through the SHOP in accordance with the relevant standards of § 155.730.

(c) *Verification of application.* For the purpose of verifying information within the employer and employee applications, the SHOP—

(1) Must verify that an individual applicant is identified by the employer as an employee to whom the qualified employer has offered coverage and must otherwise accept the information attested to within the application unless the SHOP has a reason to doubt the information's veracity; and

(2) May establish, in addition to or in lieu of reliance on the application, additional methods to verify the information provided by the applicant on the applicable application.

(d) *Eligibility adjustment period.*

(1) For an employer requesting to purchase coverage through the SHOP for which the SHOP has a reason to doubt the information on the application submitted by the employer, the SHOP must—

(i) Make a reasonable effort to identify and address the causes of such reason to doubt, including through typographical or other clerical errors;

(ii) Notify the employer of the reason;

(iii) Provide the employer with a period of 30 days from the date on which the notice described in paragraph (d)(1)(i) of this section is sent to the employer to either present satisfactory documentary evidence to support the employer's application, or resolve the inconsistency; and

(iv) If, after the 30-day period described in paragraph (d)(1)(iii) of this section, the SHOP has not received satisfactory documentary evidence, the SHOP must—

(A) Notify the employer of its denial of eligibility pursuant to paragraph (e) of this section; and

(B) If the employer was enrolled pending the confirmation or verification of eligibility information, discontinue the employer's participation in the SHOP at the end of the month following the month in which the notice is sent.

(2) For an individual requesting eligibility to enroll in a QHP through the SHOP for whom the SHOP has a reason to doubt the information on the application submitted by the individual, the SHOP must—

(i) Make a reasonable effort to identify and address the causes of such inconsistency, including through typographical or other clerical errors;

(ii) Notify the individual of the inability to substantiate his or her employee status;

(iii) Provide the employee with a period of 30 days from the date on which the notice described in paragraph (d)(2)(ii) of this section is sent to the employee to either present satisfactory documentary evidence to support the

employee's application, or resolve the inconsistency; and

(iv) If, after the 30-day period described in paragraph (d)(2)(iii) of this section, the SHOP has not received satisfactory documentary evidence, the SHOP must notify the employee of its denial of eligibility pursuant to paragraph (f) of this section.

(e) *Notification of employer eligibility.* The SHOP must provide an employer requesting eligibility to purchase coverage with a notice of approval or denial of eligibility and the employer's right to appeal such eligibility determination.

(f) *Notification of employee eligibility.* The SHOP must notify an employee seeking to enroll in a QHP offered through the SHOP of the determination by the SHOP whether the individual is eligible in accordance with § 155.710 and the employee's right to appeal such determination.

(g) *Notification of employer withdrawal from SHOP.* If a qualified employer ceases to purchase coverage through the SHOP, the SHOP must ensure that—

(1) Each QHP terminates the coverage of the employer's qualified employees enrolled in the QHP through the SHOP; and

(2) Each of the employer's qualified employees enrolled in a QHP through the SHOP is notified of the termination of their coverage prior to such termination.

§ 155.720 Enrollment of employees into QHPs under SHOP.

(a) *General requirements.* The SHOP must process the SHOP single employee applications of qualified employees to the applicable QHP issuers and facilitate the enrollment of qualified employees in QHPs. All references to QHPs in this section refer to QHPs offered through the SHOP.

(b) *Enrollment timeline and process.* The SHOP must establish a uniform enrollment timeline and process that all QHP issuers and qualified employers comply with for the following activities to occur before the effective date of coverage for qualified employees:

(1) Determination of employer eligibility for purchase of coverage in the SHOP as described in § 155.715;

(2) Qualified employer selection of QHPs offered through the SHOP to qualified employees, consistent with § 155.705(b)(2) and (3);

(3) Provision of a specific timeframe during which the qualified employer can select the level of coverage or QHP offering, as appropriate;

(4) Provision of a specific timeframe for qualified employees to provide relevant information to complete the application process;

(5) Determination and verification of employee eligibility for enrollment through the SHOP;

(6) Processing enrollment of qualified employees into selected QHPs; and

(7) Establishment of effective dates of employee coverage.

(c) *Transfer of enrollment information.* In order to enroll qualified employees of a qualified employer participating in the SHOP, the SHOP must—

(1) Transmit enrollment information on behalf of qualified employees to QHP issuers in accordance with the timeline described in paragraph (b) of this section; and

(2) Follow requirements set forth in § 155.400(c) of this part.

(d) *Payment.* The SHOP must—

(1) Adhere to requirements set forth in § 155.705(b)(4); and

(2) Terminate qualified employers that do not comply with the process established in § 155.705(b)(4).

(e) *Notification of effective date.* The SHOP must ensure that a qualified employee enrolled in a QHP is notified of the effective date of coverage consistent with § 156.260(b) of this subtitle.

(f) *Records.* The SHOP must receive and maintain records of enrollment in QHPs, including identification of—

(1) Qualified employers participating in the SHOP, and

(2) Qualified employees enrolled in QHPs.

(g) *Reconcile files.* The SHOP must reconcile enrollment information and employer participation information with QHPs on no less than a monthly basis in accordance with standards established in § 155.400(d).

(h) *Employee termination of coverage from a QHP.* If any employee terminates coverage from a QHP, the SHOP must notify the individual's employer.

§ 155.725 Enrollment periods under SHOP.

(a) *General requirements.* The SHOP must—

(1) Adhere to the start of the initial open enrollment period set forth in § 155.410; and

(2) Ensure that enrollment transactions are sent to QHP issuers and that such issuers adhere to coverage effective dates in accordance with § 156.260 of this subtitle.

(b) *Rolling enrollment in the SHOP.* The SHOP must permit a qualified employer to purchase coverage for its small group at any point during the year. The employer's plan year must consist of the 12-month period beginning with the qualified employer's effective date of coverage.

(c) *Annual employer election period.* The SHOP must provide qualified employers with a period prior to the completion of the employer's plan year and before the annual employee open enrollment period, in which the qualified employer may change its participation in the SHOP for the next plan year, including—

(1) The method by which qualified employer makes QHPs available to qualified employees pursuant § 155.705(b)(2) and (3);

(2) The employer contribution towards the premium cost of coverage;

(3) The level of coverage offered to qualified employees as described in § 155.705(b)(2) and (3); or

(4) The QHP or plans offered to qualified employees pursuant to § 155.705.

(d) *Annual employer election period notice.* The SHOP must provide notification to a qualified employer of the annual election period in advance of such period.

(e) *Annual employee open enrollment period.* The SHOP must establish an annual open enrollment period for qualified employees prior to the completion of the applicable qualified employer's plan year and after that employer's annual election period.

(f) *Employees hired outside of the initial or annual open enrollment period.* The SHOP must provide an employee hired outside of the initial or annual open enrollment period a specified period to seek coverage in a QHP beginning on the first day of employment.

(g) *Effective dates.* The SHOP must establish effective dates of coverage for qualified employees consistent with the effective dates of coverage described in § 155.720.

(h) *Renewal of coverage.* If a qualified employee enrolled in a QHP through the SHOP remains eligible for coverage, such individual will remain in the plan selected the previous year unless—

(1) He or she disenrolls from such plan in accordance with standards identified in § 155.430;

(2) He or she enrolls in another QHP if such option exists; or

(3) The QHP is no longer available to the qualified employee.

§ 155.730 Application standards for SHOP.

(a) *General requirements.* Application forms used by the SHOP must meet the requirements set forth in this section.

(b) *Single employer application.* The SHOP must use a single application to determine employer eligibility and to collect information necessary for purchasing coverage. Such application must collect the following—

(1) Employer name and address of employer's locations;

(2) Number of employees;

(3) Employer Identification Number (EIN); and

(4) A list of qualified employees and their social security numbers.

(c) *Single employee application.* The SHOP must use a single application for eligibility determination, QHP selection and enrollment for qualified employees.

(d) *Model application.* The SHOP may use the model single employer application and the model single employee application provided by HHS.

(e) *Alternative employer application.* The SHOP may use an alternative application if such application is approved by HHS and collects the following—

(1) In the case of the employer application, the information described in paragraph (b) of this section; and

(2) In the case of the employee application, the information necessary to establish eligibility of the employee as a qualified employee and to complete the enrollment of a qualified employee, such as plan selection and identification of dependents to be enrolled.

(f) *Filing.* The SHOP must allow an employer to file the SHOP single employer application and employees to file the single employee application in the form and manner described in § 155.405(c).

Subpart K—Exchange Functions: Certification of Qualified Health Plans

§ 155.1000 Certification standards for QHPs.

(a) *Definition.* The following definition applies in this subpart:

Multi-State plan is a health plan offered by a health insurance issuer under contract with the U.S. Office of Personnel Management (OPM) to offer a multi-State QHP through the Exchange. The plan must offer a benefits package that is uniform in each State and consists of the benefit design standards described in section 1302 of the Affordable Care Act; meets all requirements for QHPs; and meets Federal rating requirements pursuant to section 2701 of the PHS Act, or a State's more restrictive rating requirements, if applicable.

(b) *General requirement.* The Exchange must offer only QHPs which have in effect a certification issued or recognized by the Exchange as QHPs. Any reference to QHPs must be deemed to include multi-State plans, unless specifically provided for otherwise.

(c) *General certification criteria.* The Exchange may certify a health plan as a QHP in the Exchange if—

(1) The health insurance issuer provides evidence during the certification process in § 155.1010 that it complies with the minimum certification requirements outlined in subpart C of part 156 of this subtitle, as applicable; and

(2) The Exchange determines that making the health plan available is in the interest of the qualified individuals and qualified employers, except that the Exchange must not exclude a health plan—

(i) On the basis that such plan is a fee-for-service plan;

(ii) Through the imposition of premium price controls; or

(iii) On the basis that the health plan provides treatments necessary to prevent patients' deaths in circumstances the Exchange determines are inappropriate or too costly.

§ 155.1010 Certification process for QHPs.

(a) *Certification procedures.* The Exchange must establish procedures for the certification of QHPs consistent with § 155.1000(c).

(b) *Exemption from certification process.* Notwithstanding paragraph (a) of this section, a multi-State plan is exempt from the certification process established by the Exchange and deemed as meeting the certification requirements for QHPs.

(c) *Completion date.* The Exchange must complete the certification of the QHPs prior to the open enrollment period as outlined in § 155.410.

(d) *Ongoing compliance.* The Exchange must monitor the QHP issuers for demonstration of ongoing compliance with the certification requirements in § 155.1000(c).

§ 155.1020 QHP issuer rate and benefit information.

(a) *Receipt and posting of rate increase justification.* The Exchange must receive a justification for a rate increase for a QHP prior to the implementation of such an increase. The Exchange must ensure that the QHP issuer has prominently posted the justification on its Web site as required under § 156.210 of this subtitle.

(b) *Rate increase consideration.* The Exchange must consider rate increases in accordance with section 1311(e)(2) of the Affordable Care Act, which includes consideration of the following:

(1) A justification for a rate increase prior to the implementation of the increase;

(2) Recommendations provided to the Exchange by the State pursuant to section 2794(b)(1)(B) of the PHS Act; and

(3) Any excess of rate growth outside the Exchange as compared to the rate of such growth inside the Exchange.

(c) *Benefit and rate information.* The Exchange must receive the following information, at least annually, from QHP issuers for each QHP in a form and manner to be specified by HHS:

(1) Rates;

(2) Covered benefits; and

(3) Cost-sharing requirements.

§ 155.1040 Transparency in coverage.

(a) *General requirement.* The Exchange must collect information relating to coverage transparency as described in § 156.220(a) of this subtitle from QHP issuers.

(b) *Use of plain language.* The Exchange must determine whether the information required to be submitted and made available under paragraph (a) of this section is provided in plain language.

(c) *Transparency of cost-sharing information.* The Exchange must monitor whether a QHP issuer has made cost-sharing information available in a timely manner upon the request of an individual as required by § 156.220(d) of this subtitle.

§ 155.1045 Accreditation timeline.

The Exchange must establish a uniform period following certification of the QHP within which a QHP issuer that is not already accredited must become accredited as required by § 156.275 of this subtitle.

§ 155.1050 Establishment of Exchange network adequacy standards.

An Exchange must ensure that the provider network of each QHP offers a sufficient choice of providers for enrollees.

§ 155.1055 Service area of a QHP.

The Exchange must have a process to establish or evaluate the service areas of QHPs to determine whether the following minimum criteria are met:

(a) The service area of a QHP covers a minimum geographical area that is at least the entire geographic area of a county, or a group of counties defined by the Exchange, unless the Exchange determines that serving a smaller geographic area is necessary, nondiscriminatory, and in the best interest of the qualified individuals and employers.

(b) The service area of a QHP has been established without regard to racial, ethnic, language, health status-related factors listed in section 2705(a) of the PHS Act, or other factors that exclude specific high utilizing, high cost or medically-underserved populations.

§ 155.1065 Stand-alone dental plans.

(a) *General requirements.* The Exchange must allow the offering of a limited scope dental benefits plan through the Exchange if—

(1) The plan meets the requirements of section 9832(c)(2)(A) of the Code and 2791(c)(2)(A) of the PHS Act; and

(2) The plan covers at least the pediatric dental essential health benefit as defined in section 1302(b)(1)(J) of the Affordable Care Act.

(b) *Offering options.* The Exchange may allow the dental plan to be offered—

(1) As a stand-alone dental plan; or

(2) In conjunction with a QHP.

(c) *Certification standards.* If a plan described in paragraph (a) is offered through an Exchange, another health plan offered through such Exchange must not fail to be treated as a QHP solely because the plan does not offer coverage of benefits offered through the stand-alone plan that are otherwise required under section 1302(b)(1)(J) of the Affordable Care Act.

§ 155.1075 Recertification of QHPs.

(a) *Recertification process.* The Exchange must establish a process for recertification of QHPs that includes a review of the general certification criteria as outlined in § 155.1000(c). Upon determining the recertification status of a QHP, the Exchange must notify the QHP issuer.

(b) *Timing.* The Exchange must complete the QHP recertification process on or before September 15 of the applicable calendar year.

§ 155.1080 Decertification of QHPs.

(a) *Definition.* The following definition applies to this section:

Decertification means the termination by the Exchange of the certification status and offering of a QHP.

(b) *Decertification process.* The Exchange must establish a process for the decertification of QHPs which, at a minimum, meet the requirements in this section.

(c) *Decertification by the Exchange.* The Exchange may at any time decertify a health plan if the Exchange determines that the QHP issuer is no longer in compliance with the general certification criteria as outlined in § 155.1000(c).

(d) *Appeal of decertification.* The Exchange must establish a process for the appeal of a decertification of a QHP.

(e) *Notice of decertification.* Upon decertification of a QHP, the Exchange must provide notice of decertification to all affected parties, including:

(1) The QHP issuer;

(2) Exchange enrollees in the QHP who must receive information about a special enrollment period, as described in § 155.420;

(3) HHS; and

(4) The State department of insurance.

3. Part 156 is added as follows:

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

Subpart A—General Provisions

Sec.
156.10 Basis and scope.
156.20 Definitions.
156.50 Financial support.

Subpart B—[Reserved]

Subpart C—Qualified Health Plan Minimum Certification Standards

156.200 QHP issuer participation standards.
156.210 QHP rate and benefit information.
156.220 Transparency in coverage.
156.225 Marketing of QHPs.
156.230 Network adequacy standards.
156.235 Essential community providers.
156.245 Treatment of direct primary care medical homes.
156.250 Health plan applications and notices.
156.255 Rating variation.
156.260 Enrollment periods for qualified individuals.
156.265 Enrollment process for qualified individuals.
156.270 Termination of coverage for qualified individuals.
156.275 Accreditation of QHP issuers.
156.280 Segregation of funds for abortion services.
156.285 Additional standards specific to the SHOP.
156.290 Non-renewal and decertification of QHPs.
156.295 Prescription drug distribution and cost reporting.

Authority: Title I of the Affordable Care Act, sections 1301–1304, 1311–1312, 1321, 1322, 1324, 1334, 1342–1343, and 1401–1402.

Subpart A—General Provisions

§ 156.10 Basis and scope.

(a) *Basis.*

(1) This part is based on the following sections of title I of the Affordable Care Act:

1301. QHP defined.
1302. Essential health benefits requirements.
1303. Special rules.
1304. Related definitions.
1311. Affordable choices of health benefit plans.
1312. Consumer choice.
1313. Financial integrity.
1321. State flexibility in operation and enforcement of Exchanges and related requirements.
1322. Federal program to assist establishment and operation of nonprofit, member-run health insurance issuers.
1331. State flexibility to establish Basic Health Programs for low-income individuals not eligible for Medicaid.
1334. Multi-State plans.
1402. Reduced cost-sharing for individuals enrolling in QHPs.
1411. Procedures for determining eligibility for Exchange participation, advance premium tax credits and reduced cost sharing, and individual responsibility exemptions.
1412. Advance determination and payment of premium tax credits and cost-sharing reductions.
1413. Streamlining of procedures for enrollment through an Exchange and State, Medicaid, CHIP, and health subsidy programs.

(2) This part is based on the following sections of title I of the Act:

1150A. Pharmacy Benefit Managers Transparency Requirements

(b) *Scope.* This part establishes standards for QHPs under Exchanges, and addresses other health insurance issuer requirements.

§ 156.20 Definitions.

The following definitions apply to this part, unless the context indicates otherwise:

Applicant has the meaning given to the term in § 155.20 of this subtitle.

Benefit design standards means coverage that provides for all of the following:

(1) The essential health benefits as described in section 1302(b) of the Affordable Care Act;

(2) Cost-sharing limits as described in section 1302(c) of the Affordable Care Act; and

(3) A bronze, silver, gold, or platinum level of coverage as described in section 1302(d) of the Affordable Care Act, or is a catastrophic plan as described in section 1302(e) of the Affordable Care Act.

Benefit year has the meaning given to the term in § 155.20 of this subtitle.

Cost-sharing has the meaning given to the term in § 155.20 of this subtitle.

Cost-sharing reductions has the meaning given to the term in § 155.20 of this subtitle.

Group health plan has the meaning given to the term in § 144.103 of this subtitle.

Health insurance coverage has the meaning given to the term in § 144.103 of this subtitle.

Health insurance issuer or issuer has the meaning given to the term in § 144.103 of this subtitle.

Level of coverage means one of four standardized actuarial values as defined by section 1302(d)(2) of the Affordable Care Act of plan coverage.

Plan year has the meaning given to the term in § 155.20 of this subtitle.

Qualified employer has the meaning given to the term in § 155.20 of this subtitle.

Qualified health plan has the meaning given to the term in § 155.20 of this subtitle.

Qualified health plan issuer has the meaning given to the term in § 155.20 of this subtitle.

Qualified individual has the meaning given to the term in § 155.20 of this subtitle.

§ 156.50 Financial support.

(a) *Definitions.* The following definitions apply for the purposes of this section:

Participating issuer means any issuer offering plans that participates in the specific function that is funded by user fees. This term may include: health insurance issuers, QHP issuers, issuers of multi-State plans (as defined in § 155.1000(a) of this subtitle), issuers of stand-alone dental plans (as described in § 155.1065 of this subtitle), or other issuers identified by an Exchange.

(b) *Requirement for State Exchanges.* A participating issuer must remit user fee payments assessed by an Exchange under § 155.160 of this subtitle.

Subpart B—[Reserved]

Subpart C—Qualified Health Plan Minimum Certification Standards

§ 156.200 QHP issuer participation standards.

(a) *General requirement.* In order to participate in an Exchange, a health insurance issuer must have in effect a certification issued or recognized by the Exchange to demonstrate that each health plan it offers in the Exchange is a QHP.

(b) *QHP issuer requirement.* A QHP issuer must—

(1) Comply with the requirements of this subpart with respect to each of its QHPs on an ongoing basis;

(2) Comply with Exchange processes, procedures, and requirements set forth pursuant to subpart K of part 155 and, in the small group market, § 155.705 of this subtitle;

(3) Ensure that each QHP complies with benefit design standards, as defined in § 156.20;

(4) Be licensed and in good standing to offer health insurance coverage in each State in which the issuer offers health insurance coverage;

(5) Implement and report on a quality improvement strategy or strategies consistent with the standards of section 1311(g) of the Affordable Care Act, disclose and report information on health care quality and outcomes described in sections 1311(c)(1)(H) and (I) of the Affordable Care Act, and implement appropriate enrollee satisfaction surveys consistent with section 1311(c)(4) of the Affordable Care Act; and

(6) Pay any applicable user fees assessed under § 156.50; and

(7) Comply with the standards related to the risk adjustment program under 45 CFR part 153.

(c) *Offering requirements.* A QHP issuer must offer through the Exchange:

(1) At least one QHP in the silver coverage level and at least one QHP in the gold coverage level as described in section 1302(d)(1) of the Affordable Care Act;

(2) A child-only plan at the same level of coverage, as described in section 1302(d)(1) of the Affordable Care Act, as any QHP offered through the Exchange to individuals who, as of the beginning of the plan year, have not attained the age of 21; and

(3) A QHP at the same premium rate consistent with § 156.255(b).

(d) *State requirements.* A QHP issuer participating in the Exchange must adhere to the requirements of this subpart and any provisions imposed by the Exchange, or a State in connection with its Exchange, that are conditions of participation with respect to each of its QHPs.

(e) *Non-discrimination.* A QHP issuer must not, with respect to its QHP, discriminate on the basis of race, color, national origin, disability, age, sex, gender identity or sexual orientation.

§ 156.210 QHP rate and benefit information.

(a) *General rate requirement.* A QHP issuer must set rates for an entire benefit year, or for the SHOP, plan year.

(b) *Rate and benefit submission.* A QHP issuer must submit rate and benefit information to the Exchange pursuant to § 155.1020.

(c) *Rate justification.* A QHP issuer must submit a justification for a rate increase prior to the implementation of the increase. A QHP issuer must prominently post the justification on its Web site.

§ 156.220 Transparency in coverage.

(a) *Required information.* A QHP issuer must provide the following information in accordance with the standards in paragraph (b) of this section:

(1) Claims payment policies and practices;

(2) Periodic financial disclosures;

(3) Data on enrollment;

(4) Data on disenrollment;

(5) Data on the number of claims that are denied;

(6) Data on rating practices;

(7) Information on cost-sharing and payments with respect to any out-of-network coverage; and

(8) Information on enrollee rights under title I of the Affordable Care Act.

(b) *Reporting requirement.* A QHP issuer must submit, in an accurate and timely manner, to be determined by HHS, the information described in paragraph (a) of this section to the Exchange, HHS and the State insurance commissioner, and make the information described in paragraph (a) of this section available to the public.

(c) *Use of plain language.* A QHP issuer must make sure that the information submitted under paragraph (b) of this section is provided in plain language as defined under § 155.20 of this subtitle.

(d) *Enrollee cost-sharing transparency.* A QHP issuer must make available the amount of enrollee cost sharing under the individual's plan or coverage with respect to the furnishing of a specific item or service by a participating provider in a timely manner upon the request of the individual. At a minimum, such information must be made available to such individual through an Internet Web site and such other means for individuals without access to the Internet.

§ 156.225 Marketing of QHPs.

A QHP issuer and its officials, employees, agents and representatives must—

(a) *State law applies.* Comply with any applicable State laws and regulations regarding marketing by health insurance issuers; and

(b) *Non-discrimination.* Not employ marketing practices that discourage the enrollment of individuals with significant health needs in QHPs.

§ 156.230 Network adequacy standards.

(a) *General requirement.* A QHP issuer must ensure that the provider network of each of its QHPs, as available to all enrollees, meets the following standards—

(1) Includes essential community providers in accordance with § 156.235;

(2) Complies with any network adequacy standards established by the Exchange consistent with § 155.1050 of this section; and

(3) Is consistent with the network adequacy provisions of section 2702(c) of the PHS Act.

(b) *Notice to applicants and enrollees.* A QHP issuer must make its provider

directory for a QHP available to the Exchange for publication online pursuant to guidance from the Exchange and to potential enrollees in hard copy upon request. In the provider directory, a QHP issuer must identify providers that are not accepting new patients.

§ 156.235 Essential community providers.

(a) *General requirement.* A QHP issuer must include within the provider network of the QHP a sufficient number of essential community providers, where available, that serve predominantly low-income, medically-underserved individuals. Nothing in this requirement shall be construed to require any health plan to provide coverage for any specific medical procedure provided by the essential community provider.

(b) *Inclusion.* Essential community providers under paragraph (a) of this section include:

(1) Health care providers defined in section 340B(a)(4) of the PHS Act; and

(2) Providers described in section 1927(c)(1)(D)(i)(IV) of the Act as set forth by section 221 of Pub. L. 111–8.

§ 156.245 Treatment of direct primary care medical homes.

A QHP issuer may provide coverage through a direct primary care medical home that meets criteria established by HHS, so long as the QHP meets all requirements that are otherwise applicable and the services covered by the direct primary care medical home are coordinated with the QHP issuer.

§ 156.250 Health plan applications and notices.

QHP issuers must provide all applications and notices to enrollees in accordance with the standards described in § 155.230(b) of this subtitle.

§ 156.255 Rating variations.

(a) *Rating areas.* A QHP issuer, including an issuer of a multi-State QHP, may vary premiums for a QHP or a multi-State QHP by the geographic rating area established under section 2701(a)(2) of the PHS Act.

(b) *Same premium rates.* A QHP issuer must charge the same premium rate without regard to whether the plan is offered through an Exchange, or whether the plan is offered directly from the issuer or through an agent.

(c) *Rating categories.* A QHP issuer must cover all of the following groups using some combination of the following categories:

(1) Individuals;

(2) Two-adult families;

(3) One-adult families with a child or children; and

(4) All other families.

§ 156.260 Enrollment periods for qualified individuals.

(a) *Individual market requirement.* A QHP issuer must:

(1) Enroll a qualified individual during the initial and annual open enrollment periods described in § 155.410(b) and § 155.410(e) of this subtitle, and abide by the effective dates of coverage established by the Exchange pursuant to the requirements described in § 155.410(c) and § 155.410(f) of this subtitle; and

(2) Make available, at a minimum, special enrollment periods described in § 155.420(d), for QHPs and abide by the effective dates of coverage established by the Exchange pursuant to the requirements described in § 155.420(b) of this subtitle.

(b) *Notification of effective date.* A QHP issuer must notify the qualified individual of his or her effective date of coverage in coordination with the standards established in § 155.410(c), § 155.410(f) and § 155.420(b) of this subtitle.

§ 156.265 Enrollment process for qualified individuals.

(a) *General requirement.* A QHP issuer must adhere to the following requirements for individuals seeking enrollment in a QHP.

(b) *Enrollment information collection and transmission.* If an applicant initiates enrollment directly with the issuer for enrollment in a QHP, the QHP issuer must—

(1) Collect enrollment information using the application adopted pursuant to § 155.405 of this subtitle;

(2) Transmit the enrollment information to the Exchange consistent with the standards described in § 155.260 and § 155.270 of this subtitle to facilitate the eligibility determination process; and

(3) Enroll an individual only after receiving confirmation that the eligibility process is complete and the applicant has been determined eligible for enrollment in a QHP, in accordance with the standards established in § 155.200(c) of this subtitle.

(c) *Acceptance of enrollment information.* A QHP issuer must accept enrollment information in an electronic format from the Exchange that is consistent with the requirements of § 155.260 and § 155.270 of this subtitle.

(d) *Premium payment.* A QHP issuer must follow the premium payment process established by the Exchange pursuant to § 155.240 of this subtitle.

(e) *Enrollment information package.* A QHP issuer must provide new enrollees an enrollment information package.

(f) *Summary of benefits and coverage document.* A QHP issuer must provide the summary of benefits and coverage document to enrollees as specified in 2715 of the PHS Act and prior to the start of the open enrollment period.

(g) *Enrollment reconciliation.* A QHP issuer must reconcile enrollment files with the Exchange no less than once a month in accordance with § 155.400(d) of this subtitle.

(h) *Enrollment acknowledgement.* A QHP issuer must acknowledge receipt of enrollment information in accordance with Exchange standards established in § 155.400(b)(2) of this subtitle.

§ 156.270 Termination of coverage for qualified individuals.

(a) *General requirement.* A QHP issuer may only terminate coverage as permitted by the Exchange pursuant to § 155.430(b) of this subtitle.

(b) *Termination of coverage notice requirement.* If an enrollee's coverage with a QHP is terminated for any reason, the QHP issuer must provide the Exchange and the enrollee with a notice of termination of coverage which is consistent with the effective date established by the Exchange pursuant to § 155.430(d) of this subtitle.

(c) *Termination of coverage due to non-payment of premium.* A QHP issuer must establish a standard policy for the termination of coverage of enrollees due to non-payment of premium as permitted by the Exchange in § 155.430(b)(2)(iii) of this subtitle. This policy for the termination of coverage:

(1) Must include the grace period for enrollees receiving advance payments of the premium tax credits as described in paragraph (d) of this section; and

(2) Must be applied uniformly to enrollees in similar circumstances.

(d) *Payment grace period for recipients of advance payments of the premium tax credit.* A QHP issuer must provide a grace period of at least three consecutive months if an enrollee receiving advance payments of the premium tax credit has previously paid at least one month's premium. During the grace period, the QHP issuer must:

(1) Pay all appropriate claims submitted on behalf of the enrollee;

(2) Apply all payments received during such period to the first billing cycle in which payment was delinquent; and

(3) Continue to collect advance payments of the premium tax credit on behalf of the enrollee from the Department of the Treasury.

(e) *Notice of non-payment of premiums.* If an enrollee is delinquent on premium payment, the QHP issuer must provide the enrollee with notice of such payment delinquency.

(f) *Exhaustion of grace period.* If an enrollee receiving advance payments of the premium tax credit exhausts the grace period in paragraph (d) of this section without submitting any premium payment, the QHP issuer may terminate the enrollee's coverage effective at the end of the payment grace period.

(g) *Records of termination of coverage.* QHP issuers must maintain records in accordance with Exchange standards established pursuant to § 155.430(c) of this subtitle.

(h) *Effective date of termination of coverage.* QHP issuers must abide by the termination of coverage effective dates described in § 155.430(d) of this subtitle.

§ 156.275 Accreditation of QHP issuers.

(a) *General requirement.* A QHP issuer must:

(1) Be accredited on the basis of local performance of its QHPs in the following categories by an accrediting entity recognized by HHS:

(i) Clinical quality measures, such as the Healthcare Effectiveness Data and Information Set;

(ii) Patient experience ratings on a standardized CAHPS survey;

(iii) Consumer access;

(iv) Utilization management;

(v) Quality assurance;

(vi) Provider credentialing;

(vii) Complaints and appeals;

(viii) Network adequacy and access; and

(ix) Patient information programs, and

(2) Authorize the accrediting entity that accredits the QHP issuer to release to the Exchange and HHS a copy of its most recent accreditation survey, together with any survey-related information that HHS may require, such as corrective action plans and summaries of findings.

(b) *Time frame for accreditation.* A QHP issuer must be accredited within the timeframe established by the Exchange pursuant to § 155.1045 of this subtitle. The QHP issuer must maintain accreditation so long as the QHP issuer offers QHPs.

§ 156.280 Segregation of funds for abortion services.

(a) *State opt-out of abortion coverage.* QHP issuers must comply with State law, if such State enacts a law that prohibits abortion coverage in QHPs.

(b) *Termination of opt out.* A QHP issuer may provide coverage of abortion services through the Exchange in a State described in paragraph (a) of this section if the State repeals such law.

(c) *Voluntary choice of coverage of abortion services.* Notwithstanding any other provision of title I of the Affordable Care Act (or any other amendment made under that title):

(1) Nothing in title I of the Affordable Care Act (or any amendments by that title) shall be construed to require a QHP issuer to provide coverage of services described in paragraph (d) of this section as part of its essential health benefits, as described in 1302(b) of the Affordable Care Act, for any plan year.

(2) Subject to paragraphs (a) and (b) of this section, the QHP issuer must determine whether or not the QHP provides coverage of services described in paragraph (d) of this section as part of such benefits for the plan year.

(d) *Abortion services.*

(1) Abortions for which public funding is prohibited—The services described in this paragraph (d)(1) are abortion services for which the expenditure of Federal funds appropriated for HHS is not permitted, based on the law as in effect as of the date that is 6 months before the beginning of the plan year involved.

(2) Abortions for which public funding is allowed—The services described in this paragraph (d)(2) are abortion services for which the expenditure of Federal funds appropriated for HHS is permitted, based on the law as in effect as of the date that is 6 months before the beginning of the plan year involved.

(e) *Prohibition on the use of Federal funds.*

(1) If a QHP provides coverage of services described in paragraph (d)(1) of this section, the QHP issuer must not use any amount attributable to any of the following for the purposes of paying for such services:

(i) The credit under section 36B of the Code and the amount (if any) of the advance payment of the credit under section 1412 of the Affordable Care Act;

(ii) Any cost-sharing reduction under section 1402 of the Affordable Care Act and the amount (if any) of the advance payments of the reduction under section 1412 of the Affordable Care Act.

(2) *Establishment of allocation accounts.* In the case of a QHP to which paragraph (e)(1) of this section applies, the QHP issuer must:

(i) Collect from each enrollee in the QHP (without regard to the enrollee's age, sex, or family status) a separate payment for each of the following:

(A) An amount equal to the portion of the premium to be paid directly by the enrollee for coverage under the QHP of services other than services described in paragraph (d)(1) of this section (after reductions for credits and cost-sharing reductions described in paragraph (e)(1) of this section); and

(B) An amount equal to the actuarial value of the coverage of services described in paragraph (d)(1) of this section.

(ii) Deposit all such separate payments into separate allocation accounts as provided in paragraph (e)(3) of this section. In the case of an enrollee whose premium for coverage under the QHP is paid through employee payroll deposit, the separate payments required under this subparagraph shall each be paid by a separate deposit.

(3) *Segregation of funds.*

(i) The QHP issuer to which paragraph (e)(1) of this section applies must establish allocation accounts described in paragraph (e)(3)(ii) for enrollees receiving the amounts described in paragraph (e)(1) of this section.

(ii) *Allocation accounts.* The QHP issuer to which paragraph (e)(1) of this section applies must deposit:

(A) All payments described in paragraph (e)(2)(i)(A) of this section into a separate account that consists solely of such payments and that is used exclusively to pay for services other than the services described in paragraph (d)(1);

(B) All payments described in paragraph (e)(2)(i)(B) of this section into a separate account that consists solely of such payments and that is used exclusively to pay for services described in paragraph (d)(1) of this section.

(4) *Actuarial value.* The QHP issuer must estimate the basic per enrollee, per month cost, determined on an average actuarial basis, for including coverage under the QHP of services described in paragraph (d)(1) of this section. In making such an estimate, the QHP issuer:

(i) May take into account the impact on overall costs of the inclusion of such coverage, but may not take into account any cost reduction estimated to result from such services, including prenatal care, delivery, or postnatal care;

(ii) Must estimate such costs as if such coverage were included for the entire population covered; and

(iii) May not estimate such a cost at less than one dollar per enrollee, per month.

(5) *Ensuring compliance with segregation requirements.*

(i) Subject to paragraph (e)(5)(ii) of this section, the QHP issuer must comply with the efforts or direction of the State health insurance commissioner to ensure compliance with this section through the segregation of QHP funds in accordance with applicable provisions of generally accepted accounting requirements, circulars on funds management of the Office of

Management and Budget and guidance on accounting of the Government Accountability Office.

(ii) Nothing in this clause shall prohibit the right of an individual or QHP issuer to appeal such action in courts of competent jurisdiction.

(f) *Rules relating to notice.*

(1) *Notice.* A QHP that provides for coverage of services in paragraph (d)(1) of this section, must provide a notice to enrollees, only as part of the summary of benefits and coverage explanation, at the time of enrollment, of such coverage.

(2) *Rules relating to payments.* The notice described in paragraph (f)(1) of this section, any advertising used by the QHP issuer with respect to the QHP, any information provided by the Exchange, and any other information specified by HHS must provide information only with respect to the total amount of the combined payments for services described in paragraph (d)(1) of this section and other services covered by the QHP.

(g) *No discrimination on basis of provision of abortion.* No QHP offered through an Exchange may discriminate against any individual health care provider or health care facility because of its unwillingness to provide, pay for, provide coverage of, or refer for abortions.

(h) *Application of State and Federal laws regarding abortions.*

(1) *No preemption of State laws regarding abortion.* Nothing in the Affordable Care Act shall be construed to preempt or otherwise have any effect on State laws regarding the prohibition of (or requirement of) coverage, funding, or procedural requirements on abortions, including parental notification or consent for the performance of an abortion on a minor.

(2) *No effect on Federal laws regarding abortion.* Nothing in the Affordable Care Act shall be construed to have any effect on Federal laws regarding:

(i) Conscience protection;

(ii) Willingness or refusal to provide abortion; and

(iii) Discrimination on the basis of the willingness or refusal to provide, pay for, cover, or refer for abortion or to provide or participate in training to provide abortion.

(3) *No effect on Federal civil rights law.* Nothing in section 1303(c) of the Affordable Care Act shall alter the rights and obligations of employees and employers under Title VII of the Civil Rights Act of 1964.

(i) *Application of emergency services laws.* Nothing in the Affordable Care Act shall be construed to relieve any health care provider from providing emergency services as required by State or Federal law, including section 1867 of the Act (popularly known as ''EMTALA'').

§ 156.285 Additional standards specific to the SHOP.

(a) *SHOP rating and premium payment requirements.* QHP issuers offering QHPs through a SHOP must:

(1) Accept payment from the SHOP on behalf of a qualified employer or an enrollee in accordance with § 155.705(b)(4) of this subtitle;

(2) Adhere to the SHOP timeline for rate setting as established in § 155.705(b)(5) of this subtitle; and

(3) Charge the same contract rate for a plan year.

(b) *Enrollment periods for the SHOP.* QHP issuers must:

(1) Enroll a qualified employee in accordance with the qualified employer's annual employee open enrollment period described in § 155.725 of this subtitle;

(2) QHP issuers must provide special enrollment periods described in § 155.420 of this subtitle excluding paragraphs (d)(3) and (d)(6).

(3) Establish an effective date of coverage in accordance with § 155.410(c) of this subtitle.

(c) *Enrollment process for the SHOP.* A QHP issuer offering a QHP in the SHOP must:

(1) Adhere to the enrollment process timeline for SHOP Exchanges as described in § 155.720(b) of this subtitle;

(2) Receive enrollment information in an electronic format, in accordance with the requirements in § 155.260 and § 155.270, from the SHOP frequently as described in § 155.720(c) of this subtitle;

(3) Provide new enrollees with the enrollment information package as described in § 156.265(f) of this subtitle;

(4) Provide the summary of benefits and coverage document to qualified employers and qualified employees as described in § 156.265(g) of this subtitle;

(4) Reconcile enrollment files with the Exchange at least monthly;

(5) Acknowledge receipt of enrollment information in accordance with Exchange standards; and

(6) Enroll all qualified employees consistent with the plan year of the applicable qualified employer.

(d) *Termination of coverage in the SHOP.* QHP issuers must:

(1) Abide by the following requirements with respect to coverage termination of enrollees in the SHOP:

(i) General requirements regarding termination of coverage established in § 156.270(a);

(ii) Requirements for notices to be provided to enrollees and qualified employers in § 156.270(b) and § 156.290(b).

(iii) Requirements regarding termination of coverage effective dates as set forth in § 156.270(g).

(2) If a qualified employer chooses to withdraw from participation in the SHOP, the QHP issuer must terminate coverage for all enrollees of the withdrawing qualified employer.

§ 156.290 Non-renewal and decertification of QHPs.

(a) *Non-renewal of recertification.* If a QHP issuer elects not to seek recertification with the Exchange, the QHP issuer, at a minimum, must—

(1) Notify the Exchange of its decision prior to the beginning of the recertification process and procedures adopted by the Exchange pursuant to § 155.1075 of this subtitle;

(2) Fulfill its obligation to cover benefits for each enrollee through the end of the plan or benefit year;

(3) Fulfill data reporting obligations from the last plan or benefit year;

(4) Provide notice to enrollees as described in paragraph (b) of this section; and

(5) Terminate coverage for enrollees in the QHP in accordance with § 156.270, as applicable.

(b) *Notice of QHP non-renewal.* If a QHP issuer elects not to seek recertification with the Exchange for its QHP, the QHP issuer must provide written notice to each enrollee.

(c) *Decertification.* If a QHP is decertified by the Exchange, the QHP issuer must terminate coverage for enrollees only after:

(1) The Exchange has made notification as described in § 155.1080 of this subtitle; and

(2) Enrollees have an opportunity to enroll in other coverage.

§ 156.295 Prescription drug distribution and cost reporting.

(a) *General requirement.* In a form and manner specified by HHS, a QHP issuer must provide to HHS the following information:

(1) The percentage of all prescriptions that were provided under the QHP through retail pharmacies compared to mail order pharmacies, and the percentage of prescriptions for which a generic drug was available and dispensed compared to all drugs dispensed, broken down by pharmacy type, which includes an independent pharmacy, supermarket pharmacy, or mass merchandiser pharmacy that is licensed as a pharmacy by the State and that dispenses medication to the general public), that is paid by the QHP issuer or the QHP issuer's contracted PBM;

(2) The aggregate amount, and the type of rebates, discounts or price concessions (excluding bona fide service fees, which include but are not limited to distribution service fees, inventory management fees, product stocking allowances, and fees associated with administrative services agreements and patient care programs (such as medication compliance programs and patient education programs)) that the QHP issuer or its contracted PBM negotiates that are attributable to patient utilization under the QHP, and the aggregate amount of the rebates, discounts, or price concessions that are passed through to the QHP issuer, and the total number of prescriptions that were dispensed.

(3) The aggregate amount of the difference between the amount the QHP issuer pays its contracted PBM and the amounts that the PBM pays retail pharmacies, and mail order pharmacies, and the total number of prescriptions that were dispensed.

(b) *Confidentiality.* Information disclosed by a QHP issuer or a PBM under this section is confidential and shall not be disclosed by HHS or by a QHP receiving the information, except that HHS may disclose the information in a form which does not disclose the identity of a specific PBM, QHP, or prices charged for drugs, for the following purposes:

(1) As HHS determines to be necessary to carry out section 1150A or part D of title XVIII of the Act;

(2) To permit the Comptroller General to review the information provided;

(3) To permit the Director of the Congressional Budget Office to review the information provided; or

(4) To States to carry out section 1311 of the Affordable Care Act.

(c) *Penalties.* A QHP issuer that fails to report the information described in paragraph (a) of this section to HHS or knowingly provides false information will be subject to the provisions of subsection (b)(3)(C) of section 1927 of the Act.

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

Dated: June 29, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 7, 2011.

Kathleen Sebelius,

Secretary.

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Part III

Department of Health and Human Services

45 CFR Part 153

Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 153

[CMS–9975–P]

RIN 0938–AR07

Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment

AGENCY: Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement standards for States related to reinsurance and risk adjustment, and for health insurance issuers related to reinsurance, risk corridors, and risk adjustment consistent with title I of the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010, referred to collectively as the Affordable Care Act. These programs will mitigate the impact of potential adverse selection and stabilize premiums in the individual and small group markets as insurance reforms and the Affordable Insurance Exchanges (''Exchanges'') are implemented, starting in 2014. The transitional State-based reinsurance program serves to reduce the uncertainty of insurance risk in the individual market by making payments for high-cost cases. The temporary Federally-administered risk corridor program serves to protect against uncertainty in the Exchange by limiting the extent of issuer losses (and gains). On an ongoing basis, the State-based risk adjustment program is intended to provide adequate payments to health insurance issuers that attract high-risk populations (such as individuals with chronic conditions).

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. Eastern Standard Time (E.S.T.) on September 28, 2011.

ADDRESSES: In commenting, please refer to file code CMS–9975–P. Because of staff and resource limitations, we cannot accept comments by facsimile (Fax) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address *only:* Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–9975–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address *only:* Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–9975–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification; commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD: Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Sharon Arnold at (301) 492–4415 for general information.

Wakina Scott at (301) 492–4393 for matters related to reinsurance and risk corridors.

Kelly O'Brien at (301) 492–4399 for matters related to risk adjustment.

Grace Arnold at (301) 492–4272 for matters related to the collection of information requirements.

Brigid Russell at (301) 492–4421 for matters related to the summary of preliminary regulatory impact analysis.

Abbreviations:

Affordable Care Act—The collective term for the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152)

CMS Centers for Medicare & Medicaid Services

HHS U.S. Department of Health and Human Services

HIPAA Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191)

MLR Medical Loss Ratio

PHS Act Public Health Service Act (42 U.S.C. 201 *et seq.*)

QHP Qualified Health Plan

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this proposed rule to assist us in fully considering issues and developing policies. Comments will be most useful if they are organized by the section of the proposed rule to which they apply. You can assist us by referencing the file code [CMS–9975–P] and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all electronic comments received before the close of the comment period on the following public Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at Room 445–G, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call 1–800–743–3951.

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I. Background

A. Legislative Overview

Starting in 2014, individuals and small businesses will be able to purchase private health insurance through State-based competitive marketplaces called Affordable Insurance Exchanges, or ''Exchanges.'' Exchanges will offer Americans competition, choice, and clout. Insurance companies will compete for business on a level playing field, driving down costs. Consumers will have a choice of health plans to fit their needs. And Exchanges will give individuals and small businesses the same purchasing clout as big businesses. The Departments of Health and Human Services, Labor, and the Treasury (the Departments) are working in close coordination to release guidance related to Exchanges in several phases. The first in this series was a Request for Comment relating to Exchanges, published in the **Federal Register** on August 3, 2010. Second, Initial Guidance to States on Exchanges was issued on November 18, 2010. Third, a proposed rule for the application, review, and reporting process for waivers for State innovation was published in the **Federal Register** on March 14, 2011. Fourth, two proposed regulations, including this one, are published in this issue of the **Federal Register** to implement components of the Exchange and health insurance premium stabilization policies in the Affordable Care Act.

Section 1341 of the Affordable Care Act provides that each State must establish a transitional reinsurance program to help stabilize premiums for coverage in the individual market during the first three years of Exchange operation (2014–2016). Section 1342 provides that the Secretary must establish a transitional risk corridor program that will apply to the qualified health plans in the individual and small group markets for the first three years of Exchange operation (2014–2016). Section 1343 provides that each State may establish a program of risk adjustment for all non-grandfathered plans in the individual and small group market both inside and outside of the Exchange. These risk-spreading mechanisms, which will be implemented by the Secretary and the States, are designed to mitigate the potential impact of adverse selection and provide stability for health insurance issuers in the individual and small group markets.

Section 1321(a) also provides broad authority for the Secretary to establish standards and regulations to implement the statutory requirements related to Exchanges, reinsurance, risk adjustment, and other components of title I of the Affordable Care Act. Section 1321(a)(2) requires, in issuing such regulations, the Secretary to engage in stakeholder consultation in a way that ensures balanced representation among interested parties. We describe the consultation activities the Secretary has undertaken later in this introduction. Section 1321(c)(1) authorizes the Secretary to establish Exchanges and implement reinsurance, risk adjustment and other components of title I of the Affordable Care Act in States that have not done so.

B. Introduction

Underpinning the goals of high-quality, affordable health insurance coverage is the need to minimize the possible negative effects of adverse selection. Adverse selection occurs when each new health insurance purchaser understands his or her own potential health risk better than health insurance insurers do, and health insurance issuers are therefore less able to accurately price their products.

To avoid adverse selection, issuers may set premiums higher than necessary in order to offset the potential expense of high-cost enrollees. This uncertainty could also result in an issuer being more cautious about offering certain plan designs in the Exchange. This risk will be greatest in the first years of the Exchange, and become less as the new market matures and issuers learn more about new enrollees.

As experience in States has shown, offsetting the adverse selection from insurance reforms may be best accomplished by broadening the risk pool: making coverage affordable through lower premiums and targeted financial assistance and making coverage a responsibility so that people pay premiums in sickness and in health. In addition, to minimize the negative effects of adverse selection and foster a stable marketplace from year one, the Affordable Care Act establishes transitional reinsurance and temporary risk corridor programs, and a permanent risk adjustment program to provide payments to health insurance issuers that cover higher-risk populations and to more evenly spread the financial risk borne by issuers.

The transitional reinsurance program and temporary risk corridor program, which begin in 2014, are designed to provide issuers with greater payment stability as insurance market reforms are implemented. The reinsurance program, which is a State-based program, will reduce the uncertainty of insurance risk in the individual market by making payments for high-cost cases. This program will attenuate individual market rate increases that might otherwise occur because of the immediate enrollment of individuals with unknown health status, potentially including, at the State's discretion, those currently in State high risk pools. The risk corridor program, which is a Federally-administered program, will protect against uncertainty in setting rates in the Exchange by limiting the extent of issuer losses (and gains). Under the risk corridor program, an issuer of a qualified health plan (QHP) plan whose gains are greater than three percent of the issuer's projections must remit charges to HHS, while HHS must make payments to an issuer of a QHP plan that experiences losses greater than three percent of the issuer's projections. On an ongoing basis, the risk adjustment program is intended to provide adequate payments to health insurance issuers that attract high-risk populations (such as those with chronic conditions). Under this program, generally, funds are transferred from issuers with lower risk enrollees to issuers with higher risk enrollees. Section 1343 indicates that the Secretary may utilize criteria and methods similar to the criteria and methods utilized under part C or D of title XVIII of the Social Security Act. Proposed standards for these critical programs are addressed in this proposed rule. The chart below summarizes theses programs:

Program	Reinsurance	Risk corridors	Risk adjustment
What	Provides funding to plans that enroll highest cost individuals.	Limit issuer loss (and gains)	Transfers funds from lowest risk plans to highest risk plans.
Program Oversight	State or State Option if no State-Run Exchange.	HHS	State Option in a State-Run Exchange.
Who Participates	All issuers and TPAs contribute funding; non-grandfathered individual market plans (inside and outside the Exchange) are eligible for payments.	Qualified Health Plans (QHPs)	Non-grandfathered individual and small group market plans, inside and outside the Exchange.
When	Throughout the year 2014–2016	After reinsurance and risk adjustment 2014–2016.	After end of benefit year 2014 and subsequent years.
Why	Offsets high cost outliers	Protect against inaccurate rate-setting.	Protects against adverse selection.
Time Frame	3 years (2014–2016)	3 years (2014–2016)	Permanent.

On August 3, 2010, HHS published a Request for Comment (RFC) inviting the public to provide input regarding the rules that will govern the Exchanges and related functions such as reinsurance and risk adjustment. In particular, HHS asked States, tribal representatives, consumer advocates, employers, issuers, and other interested stakeholders to comment on the types of standards Exchanges and related functions should be required to meet. The comment period closed on October 4, 2010. In this proposed rule, we do not directly respond to comments from the RFC; however, we generally describe the comments received at the beginning of each subpart and refer to them, where applicable, when discussing specific regulatory proposals. We intend to respond to comments from the RFC, along with comments received on this proposed rule, as part of the final rule. We also plan to disseminate parameters that will rely on factors that may change each year, such as the national reinsurance contribution rate and the Federally-certified risk adjustment model, in an annually updated Federal notice of benefit and payment parameters. In addition to the RFC, we have consulted with stakeholders through weekly meetings with the National Association of Insurance Commissioners, regular contact with States that received Exchange planning grants, and meetings with tribal representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties.

II. Provisions of the Proposed Regulation

A. Subpart A—General Provisions

1. Basis and Scope (§ 153.10)

Section 153.10(a) of subpart A specifies that the general statutory authority for the standards proposed in part 153 are based on the following sections of title I of the Affordable Care Act: sections 1321 and 1341–1343. Section 153.10(b) specifies that this part establishes standards for the establishment and operation of a transitional reinsurance program, temporary risk corridors, and a permanent risk adjustment program.

2. Definitions (§ 153.20)

Under § 153.20, we set forth definitions for terms that are used throughout part 153. Many of the definitions presented in § 153.20 are taken directly from the Affordable Care Act, from existing regulations, or from § 155.20 of the notice of proposed rulemaking entitled ''Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans,'' published in this issue of the **Federal Register**. New definitions were created for the purposes of carrying out regulations proposed in part 153. When a term is defined in part 153 other than in subpart A, the definition of the term is applicable only to the relevant subpart or section. The application of the terms defined in this section is limited to this proposed rule.

Specifically, several terms are defined by the Affordable Care Act, including ''individual market'' (section 1304(a)(2)), ''qualified health plan'' (section 1301(a)(1)), and ''health plan'' (section 1301(b)(1)). The definition for an ''Exchange'' is drawn from the statutory text in section 1311(d)(1) and 1311(d)(2)(A). The term ''State'' is also taken directly from section 1304(d) of the Affordable Care Act to mean the 50 States and the District of Columbia.

Some definitions were taken from other interim final regulations issued pursuant to the Affordable Care Act, including the term ''grandfathered plan'' from § 147.140. The definitions for the terms ''group health plan,'' ''health insurance issuer,'' and ''health insurance coverage'' are cross-referenced to the definitions established in § 144.103. The definitions for the terms ''enrollee,'' ''benefit year,'' and ''small group market'' are cross-referenced to the definitions in the notice of proposed rulemaking entitled ''Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans,'' published in this issue of the **Federal Register**. Other definitions used throughout this proposed rule are established for specific purposes. For example, the terms ''applicable reinsurance entity,'' ''contributing entity,'' and ''reinsurance-eligible plan'' relate to reinsurance programs, while the term ''risk adjustment covered plan'' relates to the risk adjustment program.

B. Subpart B—State Notice of Insurance Benefits and Payment Parameters

In this subpart, we propose a process by which the States that are operating an Exchange or establishing a reinsurance program issue an annual notice to disseminate information to issuers and other stakeholders about specific requirements to support payment-related functions. This notice may also be a mechanism to address updates to other Exchange-related provisions proposed elsewhere that impact payment and benefit design. This provides a practical way to update certain payment and benefit factors that may change annually, such as reinsurance contribution rates that are based on annually changing thresholds.

1. Establishment of State insurance benefits and payment parameters (§ 153.100)

In § 153.100(a), we propose that a State operating an Exchange, as well as a State establishing a reinsurance program, issue an annual notice to describe the specific parameters that the State will employ if that State intends to utilize any reinsurance or risk adjustment parameters that differ from those specified in the forthcoming annual Federal notice of benefit and payment parameters. We believe the

information contained in the State notice should be provided one year in advance of the benefit year so that issuers may account for any updates in their design and review of plan benefits and in establishing and reviewing rates. As such, in paragraph (b), we propose specific deadlines for the State notice, if it intends on modifying Federally-proposed parameters, which will be tied to a forthcoming annual Federal notice of benefit and payment parameters, upon which the public will have an opportunity to comment. Below are charts detailing the schedules for the forthcoming annual Federal notice of benefit and payment parameters for 2014 and subsequent years, with the first two dates occurring in the calendar year two years before the effective date.

ANNUAL FEDERAL NOTICE OF BENEFIT AND PAYMENT PARAMETERS

HHS publishes advance notice.	Mid-October.
Comment period ends	Mid-November.
HHS publishes final notice	Mid-January.

We propose that States that plan to modify Federal parameters issue their notice by early March in the calendar year before the effective date. We understand that States may have their own timelines for public notice; this proposed requirement sets an outer bound for the final notice to be issued by a State that intends to utilize any reinsurance or risk adjustment parameters that differ from those specified in the forthcoming annual Federal notice of benefit and payment parameters. We seek comment on whether the proposed timing allows issuers sufficient time to reflect these State requirements in setting rates. In particular, we seek comment as to whether the schedule should be adjusted in the initial year to provide issuers additional time for setting rates for 2014.

We also propose in paragraph (c) that if a State operating an Exchange or establishing a reinsurance program does not provide public notice of its intent to have State-specific parameters for any provision within the period specified in paragraph (b) of this section, the parameters set forth in the forthcoming annual Federal notice of benefits and payment parameters will serve as the State parameters.

2. Standards for the State Notice (§ 153.110)

In paragraph (a)(1), we propose that content related to the reinsurance program include the data requirements and data collection frequency for health insurance issuers to receive reinsurance payment. In paragraph (a)(2), we propose that the State specify the attachment point, reinsurance cap, and coinsurance rate if the State plans to use different values than those set forth in the forthcoming annual Federal notice of benefit and payment parameters. In paragraph (a)(3), we propose that if a State plans to use more than one reinsurance entity, the State must include in the notice information related to the geographic boundaries of each applicable reinsurance entity and estimates related to the number of enrollees, payments, and premiums available for contributions in each region. We note that the forthcoming annual Federal notice of benefit and payment parameters will provide States with estimates for these values at the State level.

In paragraph (b), we propose content related to the risk adjustment program if the State intends to modify the risk adjustment parameters set forth in the forthcoming annual Federal notice of benefits and payment parameters, including a detailed description of and rationale for any modification. Specifically, the State description of modifications should include: the methodology for determining average actuarial risk, including the establishment of risk pools and the Federally-certified risk adjustment model; and the risk adjustment data validation methodology.

C. Subpart C—State Standards for the Transitional Reinsurance Program for the Individual Market

Section 1341 of the Affordable Care Act provides that a transitional reinsurance program is established in each State to help stabilize premiums for coverage in the individual market during the years 2014 through 2016. Under this provision, all health insurance issuers, and third-party administrators on behalf of self-insured group health plans, must make contributions to a not-for-profit reinsurance entity to support reinsurance payments to individual market issuers that cover high-cost individuals, except for high-cost individuals in grandfathered individual market health plans. As a basis for reinsurance payments, the law directs the Secretary to develop a list of 50 to 100 medical conditions to identify high-cost individuals or to identify alternative methods for payment in consultation with the American Academy of Actuaries (AAA). In this subpart, we codify section 1341 of the Affordable Care Act as it relates to establishing a reinsurance program. Related standards on health insurance issuers with respect to reinsurance are proposed in subpart E.

We identified three critical policy goals of the transitional reinsurance program. First, the transitional reinsurance program should offer protection to health insurance issuers against medical cost overruns for high-cost enrollees in the individual market, particularly those that are newly insured or those with previously excluded conditions, thereby allowing issuers to set lower premiums.

Second, a transitional reinsurance program should permit early and prompt payment of reinsurance funds during the benefit year to help offset the potential high costs of health insurance issuers early in the benefit year. This objective is particularly important since the two other risk sharing protections against adverse selection—risk adjustment and risk corridors—are likely to be calculated after the end of the benefit year.

Third, the transitional reinsurance program should require minimal administrative burden since it is a temporary program. Given the short-term nature of the program, the costs of setting up and administering this program must be commensurate with its benefits over the three-year window.

We received a number of comments on the transitional reinsurance program in response to the RFC. Multiple respondents emphasized that, although underlying conditions are referenced in the Affordable Care Act with respect to the reinsurance provisions, reinsurance programs typically do not consider the health status of the individual. Health insurance issuers seek traditional reinsurance to protect against unusually high medical cost of enrollees during a coverage year. Generally, reinsurance is not tied to underlying conditions that lead to high enrollee medical costs but to high claims costs beyond a specific dollar threshold within a coverage period, regardless of health condition.

Several commenters asserted that coverage of specific conditions under a reinsurance program could lead to discriminatory practices toward certain individuals, with one commenter noting that identifying medical conditions as a basis for reinsurance payments requires a level of verification beyond that of traditional reinsurance. Another commenter contended that traditional reinsurance that makes payments based solely on incurred costs does not encourage efficient and effective care.

We considered all of these comments in the development of this subpart, along with commenter suggestions on entities that could serve as the

applicable reinsurance entity for a State. As explained more fully below, we believe that States should have discretion to make a number of decisions within the proposed standards, including the appropriateness of any specific entity as an administrator of the reinsurance program.

1. Definitions (§ 153.200)

In § 153.200, we propose several definitions that are critical to the establishment of a properly functioning transitional reinsurance program. We define an ''attachment point'' as the threshold dollar amount of costs incurred by a health insurance issuer for payment of essential health benefits provided for an enrolled individual, after which threshold, the costs for covered essential health benefits are eligible for reinsurance payments. The definition of ''essential health benefits'' will be proposed in future rulemaking. We define ''coinsurance rate'' as the rate at which the applicable reinsurance entity will reimburse the health insurance issuer for costs incurred to cover essential health benefits after the attachment point and before the reinsurance cap. We define the ''reinsurance cap'' as the threshold dollar amount for costs incurred by a health insurance issuer for payment of essential health benefits provided for an enrolled individual, after which threshold, the costs for covered essential health benefits are no longer eligible for reinsurance payments. In order to ensure reinsurance payments are made on a comparable set of benefits, we propose that payments be calculated for costs to cover the essential health benefits package. We solicit comments on alternatives to the use of the essential health benefits package.

We define ''contribution rate'' as the rate, based on a percent of premium, used to determine the dollar amounts each health insurance issuer and third party administrator, on behalf of a self-insured group health plan, must contribute to a State reinsurance program. We define the ''percent of premium'' as the percent of total revenue, based on earned premiums as described in § 158.130(a), in all fully-insured markets (inside and outside of the Exchange) or the percent of total medical expenses in a self-insured market. Part 158 describes standards for health insurance issuers implementing the medical loss ratio requirements under section 2718 of the PHS Act. Finally, we define ''third party administrator'' as the claims processing entity for a self-insured group health plan. As such, if a self-insured group health plan processes its own claims, the self-insured plan will be considered a third-party administrator for the purpose of the reinsurance program.

2. State Establishment of a Reinsurance Program (§ 153.210)

In § 153.210, we describe standards for States regarding the establishment of a reinsurance program. We propose in paragraph (a) that each State that elects to operate an Exchange must also establish a reinsurance program as required by the law. In paragraph (a)(1), we codify section 1341(a) of the Affordable Care Act, which requires that such States must either enter into a contract with an existing applicable reinsurance entity or establish an applicable reinsurance entity to carry out the provisions for the reinsurance program discussed in this subpart. We believe the statute allows State flexibility in selecting an applicable reinsurance entity and do not propose more specific guidelines.

The Affordable Care Act also allows States to set up more than one reinsurance entity, although this option may increase administrative costs. We propose in paragraph (a)(2) that, for any State that chooses to have more than one reinsurance entity, the State must publish in a State notice, described in § 153.110, information regarding the geographic divisions between the applicable entities. We further interpret the statute to imply that the geographic divisions of the applicable reinsurance entities must be distinct and, together, cover the entire individual market in the State and not just certain areas or populations. In paragraph (a)(3), we propose to allow the State to permit a reinsurance entity to subcontract administrative functions, provided that the State reviews and approves these subcontracted arrangements as described in paragraph (a)(4). We interpret the statute to allow flexibility in the performance of administrative functions, with the understanding that the responsible party must be the applicable reinsurance entity.

We propose in paragraph (a)(5) that the establishment of, or contract with, the applicable reinsurance entity must extend for a sufficient period to ensure that the entity can fulfill all reinsurance requirements for all benefit years through 2016 and any activities required to be undertaken in subsequent periods. Any State in which contributions remain to be disbursed for benefit years beyond 2016 must ensure that an applicable reinsurance entity is available for required payment activities for additional benefit years. When establishing or contracting with an applicable reinsurance entity, States must establish sufficient time to pay reinsurance claims after 2016. This time cannot extend past December 31, 2018 as described in section 1341(b)(4) of the Affordable Care Act.

We clarify in paragraph (b) that there may be situations in which an applicable reinsurance entity operates a reinsurance program for more than one State. In other words, several States may contract with one reinsurance entity, but that entity must maintain separate risk pools for each State's reinsurance programs. In such cases, we consider each contract to be an individual reinsurance arrangement between a specific State and the applicable reinsurance entity.

We propose in paragraph (c) to allow a State that does not elect to establish an Exchange to operate its own reinsurance program. Under this circumstance, the State will be required to carry out the provisions of this subpart. In paragraph (d), we propose that, if a State does not elect to establish an Exchange and does not determine to operate its own reinsurance program, HHS will establish the reinsurance program to perform all the reinsurance functions for that State. These functions would include the collection of all contributions described in § 153.220, including funds required to operate and administer the applicable reinsurance functions. In paragraph (e), we propose that each State that establishes an Exchange or operates a reinsurance program must ensure that each applicable reinsurance entity complies with all provisions of this subpart and with subpart E.

3. Collection of Reinsurance Contribution Funds (§ 153.220)

In § 153.220, we describe standards for how States must ensure that the reinsurance entity collects reinsurance contribution funds. Section 1341 provides for the collection of contribution funds to cover all reinsurance payments and also permits the collection of funds to cover administrative costs incurred by the applicable reinsurance entity. These contribution funds must be collected by the reinsurance entity from all health insurance issuers and third party administrators on behalf of self-insured plans. The aggregate contribution funds for purposes of making reinsurance payments are specified as $10 billion in 2014, $6 billion in 2015, and $4 billion in 2016 as described in section 1341(b)(3)(B)(iii). None of these funds can be used for any purpose other than paying reinsurance or administering the reinsurance programs. The aggregate

contribution funds would be returned to those issuers that qualify for the transitional reinsurance program. In paragraph (a)(1), we codify the aggregate contribution amounts.

The statute also requires that the reinsurance entity collect specified additional contribution funds for deposit into the general fund of the U.S. Treasury. The additional contribution funds to the general fund are set at $2 billion in calendar years 2014 and 2015, and $1 billion in 2016 as described in section 1341(b)(3)(B)(iv). The Congressional Budget Office considered the additional contributions to score as an offset for the costs of administering the Early Retiree Reinsurance Program within the 10 year budget window, however, these funds will not be used to directly pay for ERRP costs. In paragraph (a)(2), we codify these additional contribution amounts.

Although the transitional reinsurance program is State-based, section 1341(b)(3) sets contribution levels for the program on a national basis. We considered two approaches by which to collect contribution funds: (1) Use of a national uniform contribution rate, and (2) use of a State-level allocation, both set by HHS to ensure that the sum of all contribution funds equals the national amounts set forth in statute. In paragraph (b) we propose the first approach to collect contribution funds for amounts listed in paragraph (a)(1) and (a)(2). Use of a national contribution rate is a simpler approach. Further, since there is significant uncertainty about Exchange enrollment, the overall health of the enrolled population, and the cost of care for new enrollees, we believe that a national contribution rate would be the less ambiguous approach of the two. All contribution funds collected by a State establishing a reinsurance program, using the national contribution rate, will stay in that State and be used to make reinsurance payments on valid claims submitted by reinsurance-eligible plans in that State. A State-level allocation would be more complex to administer. We solicit comments regarding whether to use a State-level allocation or a national rate.

There are two methods we considered for determining contributions using a national rate: (1) A percent of premium amount applied to all contributing entities, and (2) a flat per capita amount applied to all covered enrollees of contributing entities. In paragraph (b)(1), we propose the percent of premium method as the fairest method by which to collect these contributions, as it allows States that tend to have higher premium and health care costs, and thus reinsurance claims, to collect additional funds towards reinsurance. A flat, per capita amount could represent an excessively high percent of premium for products that are designed and intended to have low premiums targeted toward a population such as young adults and children. HHS will establish the percentage through a forthcoming annual Federal notice of benefit and payment parameters, based on its estimate of total premiums in the fully insured market and medical expenses in the self-insured market. We invite comments regarding the preferred method for calculating health insurance issuer contribution funds using a national rate.

In paragraph (b)(2), we also propose that all contribution funds collected for reinsurance payments must be used for reinsurance, and all contribution funds collected for the U.S. Treasury must be paid to the U.S. Treasury. In paragraph (b)(3)(i), we propose that a State may collect more than its amount collected in the national rate, if the State believes that these amounts are not sufficient to cover the payments it will make under the payment formula. Nothing in the Affordable Care Act precludes a State from supplementing this program. In paragraph (b)(3)(ii), we also propose that a State may collect more than its amount collected at the national rate to cover the administrative costs of the applicable reinsurance entity.

We have also considered the frequency by which applicable reinsurance entities should collect contribution funds from contributing entities. For example, applicable reinsurance entities could collect contribution funds intended for reinsurance payments and payments to the U.S. Treasury on a monthly basis beginning in January 2014 so that reinsurance payments could begin in February 2014. We invite comments on the most appropriate method and frequency to collect reinsurance contribution funds.

4. Calculation of Reinsurance Payments (§ 153.230)

As required, in § 153.230 we set the payment policy for the reinsurance program based upon consultation with the AAA. The reinsurance payment policy addresses two basic issues: (1) How to determine the individuals who are covered by reinsurance, and (2) how to determine appropriate payment amounts. Given the short-term nature of the program, our primary objective is to select an implementation approach that is administratively and operationally simple, but satisfies the goals of the program. Therefore, we would use reliable and readily accessible data sources that would allow health insurance issuers to receive prompt payment. We propose in paragraph (a) of this section that coverage be based on items and services within the essential health benefits for an individual enrollee that exceeds an attachment point. We invite comments regarding this proposed provision or if we should allow reinsurance payment for more generous coverage beyond that provided by essential health benefits.

In paragraph (b), we propose to announce the reinsurance payment formula and State-specific values for the attachment point, reinsurance cap, and coinsurance rate in the forthcoming annual Federal notice of benefits and payment parameters. We believe that publishing this information in a Federal notice is the best approach for announcing the attachment point and reinsurance cap as these values may change in years 2015 and 2016. The Affordable Care Act does not suggest that the three-year reinsurance program should replace commercial reinsurance or internal risk mitigation strategies. There will be a continued need for ongoing commercial reinsurance. Therefore, we propose establishing a reinsurance cap set at the attachment point of traditional reinsurance. We seek comment on this approach.

In paragraph (b)(1), we propose that the reinsurance payment amount be a percentage of those costs above an attachment point and below a reinsurance cap. However, we believe States may have unique situations and recommend allowing a State that runs the reinsurance program to establish its own payment formula by varying the attachment point, coinsurance rate, and reinsurance cap. The reasoning for the policy proposed in paragraph (b)(1) follows below, along with a discussion of some operational issues related to the timing of reinsurance payments.

In our consultation, AAA laid out a number of different ways to implement the reinsurance payment provisions. A letter outlining this issue can be found on their Web site at *https://www.actuary.org/pdf/health/Reinsurance%20Options%209%2022%202010.pdf.* With respect to the determination of who will be covered, AAA identified four possible approaches:

(1) Identification of individuals with specific conditions based on claims data.

(2) Identification of individuals with specific conditions based on survey data.

(3) Identification of high-risk individuals using risk adjustment data

and a condition-based risk adjustment model.

(4) Identification of reinsurance-eligible individuals based on medical cost to the health insurance issuer for covered benefits.

The last option, which we propose to adopt, focuses on all high-cost enrollees without respect to the conditions that caused the increased cost. This approach would be most familiar to health insurance issuers and administratively less burdensome than the first and second options. Data will be immediately available and dependent only on health insurance issuers filing proof of payment for claims. While the third option might mitigate some of the burden and cost concerns, it would not eliminate the timing issues that are critical to effective reinsurance implementation. In 2014, we will be able to collect reliable condition information only for those conditions that are diagnosed during that benefit year. In other words, condition-based reinsurance will not be a predictive model until at least 2015 due to lack of sufficient and timely data. As a result, we found all of the condition-based approaches to eligibility identification to be considerably more burdensome in comparison to the medical cost approach without significant improvement in outcomes from a determination standpoint. We solicit comments for a suitable method for ensuring that issuer costs are appropriate and accurate.

With respect to the decision on how to calculate payments, AAA discussed the following two principal approaches:

(1) Payments for costs incurred above an attachment point.

(2) Fixed payment schedule for specific conditions.

The first option, payment for costs incurred above an attachment point, aligns compensation with cost by reimbursing health insurance issuers that have enrollees in the individual market who actually experience higher health costs. We propose this approach, which represents a more traditional view of reinsurance. It is also consistent with the Early Retiree Reinsurance Program. Health insurance issuers are eligible for reinsurance payments only when costs are in excess of a certain level. The proposed approach is simpler from an operational perspective; the only data required to implement it will be cost and claims data for individuals. This approach also works in tandem with the medical-cost method of determining eligibility.

The fixed payment schedule option, which we are not proposing to adopt, has the effect of paying the same amount for all individuals who present with a specific condition regardless of actual enrollee cost. This method assumes that high-cost individuals incurring highest costs across plans are of equal care mix and does not make distinctions. This method also penalizes issuers that attract more individuals with higher disease burden within disease categories, and thus may be less effective in mitigating the actual financial impact of adverse selection.

In sum, we propose using medical cost experience only to identify eligible enrollees for which health insurance issuers would receive reinsurance. Accordingly, we also propose to use the attachment point approach for determining payment. As described by AAA, an attachment method for calculating reinsurance payments considers costs only for high-risk individuals and may reduce incentives for health insurance issuers to control costs. However, use of a reinsurance cap, as well as the requirement for health insurance issuer coinsurance rate above the attachment point and below the cap, may incentivize health insurance issuers to control costs. We invite comment regarding the best method of determining payments for the reinsurance program, which can relate to either our criteria for selecting eligible enrollees for payment or the method for calculating the payment amounts.

We propose in § 153.230(b)(2) that all payments to the general fund of the U.S. Treasury be made in a manner specified in the forthcoming annual Federal notice of benefits and payment parameters. We have also considered the frequency for which payments should be made to the U.S. Treasury. For example, the applicable reinsurance entities could remit payment on a monthly or quarterly basis commencing February 28, 2014, continuing through January 31, 2017 or until States have remitted the full amount of all payments. We invite comment as to the most appropriate frequency and method for applicable reinsurance entities to remit payment to the U.S. Treasury.

We propose in § 153.230(c) to allow some degree of State variation from the reinsurance parameters proposed by HHS. The Affordable Care Act contemplates the potential of modifications to the payment parameters through a statutory reference to ''model regulation'' as opposed to strict Federal regulation. Therefore, we propose in paragraph (c)(1) that the State may alter the attachment point, reinsurance cap, including elimination of the cap, and coinsurance rate. We propose in paragraph (c)(2) that States must publish any modification to the reinsurance payment formula and parameters in a State notice as described in § 153.110 of this part. We propose in paragraph (c)(3) that the State must ensure that all proposed alterations to the reinsurance formulas proposed by HHS, including payments and contributions, result in the applicable reinsurance entity having sufficient contributions to meet of all of its obligations for payments. Such alterations to reinsurance parameters do not require HHS approval.

We believe that a State may have many reasons to make adjustments to the HHS reinsurance payment formula. First, the State may determine to increase the reinsurance benefit above the level established by HHS. Second, the State may have additional unexpended funds from a prior contribution period and may seek to adjust the reinsurance formulas to disburse the unexpended funds. Third, the State may elect to pay the same amounts recommended by HHS, but may wish to make those payments either earlier or later in the medical cost experience. Finally, the State may decide to vary the annual amounts without varying the total across all three years.

5. Disbursement of Reinsurance Payments (§ 153.240)

In § 153.240, we propose parameters for the timing of reinsurance payments. In paragraph (a) of this section, we propose that States must ensure that the applicable reinsurance entity collects from health insurance issuers of reinsurance-eligible plans data required to calculate payments described in § 153.230, according to the data requirements and data collection frequency specified by the State in the notice described in § 153.110 or in the forthcoming annual Federal notice of benefit and payment parameters.

Since we are proposing that reinsurance eligibility and payments be based on the health insurance issuer medical costs, we believe that a standard method of collecting the required information should be a reasonable goal and easily achievable. Further, a standard method will enable multi-State health insurance issuers to submit data promptly without causing disruption for any single-State health insurance issuer.

In paragraph (b), we propose that the State must ensure that each applicable reinsurance entity makes payments that do not exceed contributions and makes payments to health insurance issuers of reinsurance-eligible plans according to § 153.230. We also propose in paragraph

(b)(2) to allow States to reduce payments on a pro rata basis to match the amount of contributions received by the State in a given reinsurance year. Any pro rata reductions made by the State must be made in a fair and equitable manner for all health insurance issuers in the individual market.

In paragraph (b)(3), we propose that the State must ensure that an applicable reinsurance entity makes payments as specified in § 153.410(b) to the issuer of a reinsurance-eligible plan after receiving a valid claim for payment. We invite comments as to the most appropriate timeframe that an applicable reinsurance entity should make payments for reinsurance claims submitted, particularly, since reinsurance claims may exceed contributions for a given month, but not total projected contributions for the entire year.

We have also considered deadlines by which a health insurance issuer could submit a claim for a given reinsurance benefit year. For example, Medicare Part D has a requirement for data submission within 6 months after the end of the coverage year, and we believe this is an appropriate standard. We seek comment as to whether the deadline for health insurance issuers for submitting reinsurance claims should be the same or different.

A standard deadline would allow for an orderly completion of the payment processes that depend upon reinsurance, specifically the risk corridors program and the medical loss ratio (MLR) reporting to support the rebate calculations in section 2718 of the PHS Act. Health insurance issuers must know the value of their reinsurance payments and must report that value to HHS under the risk corridor and MLR reporting provisions. Failure to establish a standard deadline could result in excessive delays in the completion of the rebate calculations under section 2718 of the PHS Act. Such delays would in turn delay receipt of rebate payments by the affected enrollees. We invite comment on the use of a standard deadline and the most appropriate deadline considering the interaction of the reinsurance program with risk corridor and the MLR process.

Finally, in paragraph (c), we propose that for each benefit year, the State maintains all records related to the reinsurance program for 10 years, consistent with requirements for record retention under the False Claims Act. We solicit comments on this record retention requirement.

5. Coordination With High-Risk Pools (§ 153.250)

In § 153.250, we codify the requirement under section 1341(d) of the Affordable Care Act that States shall eliminate or modify high risk pools to the extent necessary to carry out the reinsurance program. As stated in the introduction to this subpart, the reinsurance program required under the Affordable Care Act is designed to help mitigate adverse selection risks in the first three years of Exchange operation. In paragraph (a), we codify the above-referenced section. In paragraph (b), we propose to allow a State that continues its high risk pool to coordinate its high risk pool with its reinsurance program to the extent it conforms to the provisions of this subpart. We seek comment regarding whether a high risk pool that continues operation after January 1, 2014 should be considered an individual market plan eligible for reinsurance under this provision.

D. Subpart D—State Standards Related to the Risk Adjustment Program

In subpart D, we propose standards for States with respect to the risk adjustment program required under section 1343 of the Affordable Care Act. Parallel provisions on health plans are proposed in subpart G of this subpart. Section 1343 provides for a program of risk adjustment for all non-grandfathered plans in the individual and small group market both inside and outside of the Exchange. Under this provision, the Secretary, in consultation with the States, must establish criteria and methods to be used by States in determining the actuarial risk of plans within a State. States electing to operate an Exchange, or HHS on behalf of States not electing to operate an Exchange, will assess charges to plans that experience lower than average actuarial risk and use them to make payments to plans that have higher than average actuarial risk. Thus, the risk adjustment program is intended to reduce or eliminate premium differences between plans based solely on expectations of favorable or unfavorable risk selection or choices by higher risk enrollees in the individual and small group market. The risk adjustment program also serves to level the playing field inside and outside of the Exchange, reducing the potential for excessive premium growth or instability within the Exchange.

We received a variety of comments on the risk adjustment process in response to the RFC. Many commenters expressed strong opinions about the extent of Federal oversight in risk adjustment and the level of flexibility afforded States for developing a risk adjustment model and how much to rely on current prospective models being used, for example, in Medicare Advantage or concurrent risk adjustment models being used.

We also received comments related to data standards and the role of the Federal government. Commenters noted difficulties in obtaining certain types of data accurately and expressed concerns about audit requirements. Commenters discussed upcoding problems, as well as issues of credibility of the underlying systems to support risk adjustment. Commenters also raised issues related to the transition both to the Exchanges and the risk adjustment program, with the primary issue being the timing of claims data availability in the early years of the program. Some States indicated that they are developing ''all payer claims databases,'' although not all of these databases are expected to be complete by 2014. However, even existing ''all payer'' databases will not contain any data from the currently uninsured individuals, who are expected to comprise a segment of new individual market enrollees.

Overall, we believe that States have discretion to make a number of decisions within the standards we propose herein.

1. Definitions (§ 153.300)

We propose several definitions that are specifically applicable to this subpart in § 153.300. First, we distinguish between risk adjustment models and risk adjustment methodologies. We define ''risk adjustment model'' as an actuarial tool used to predict health plan costs based on the relative actuarial risk of enrollees in risk adjustment covered plans, which we had previously defined as non-grandfathered plans in the individual and small group market. We define ''risk adjustment methodology'' as the specific set of procedures used to determine average actuarial risk.

A ''Federally-certified risk adjustment methodology'' is a risk adjustment methodology that has been developed and promulgated by HHS or has been certified by HHS. As explained further in § 153.330, States may use a modified methodology if it has been certified by HHS and deemed a Federally-certified risk adjustment methodology. An ''alternate risk adjustment methodology'' is a risk adjustment methodology proposed by one or more States for use in place of the Federally-certified risk adjustment methodology, not yet certified by HHS. Additionally, we define ''risk pool'' as the population

across which risk is distributed in risk adjustment.

2. Risk Adjustment Administration (§ 153.310)

Section 1343(a) of the Affordable Care Act establishes that States must assess risk adjustment charges and provide risk adjustment payments based on plan actuarial risk as compared to a State average. We interpret this provision to mean that risk pools must be aggregated at the State level, even if a State decides to utilize regional Exchanges. Furthermore, section 1343(c) indicates that risk adjustment applies to individual and small group market health insurance issuers of non-grandfathered plans within a State, both inside and outside of the Exchange. Accordingly, similar to our approach in reinsurance, if multiple States contract with a single entity to administer risk adjustment, risk may not be combined across State lines, but must be pooled at the individual State-level.

In this section, in paragraph (a)(1), we specify that any State electing to establish an Exchange is eligible to establish a risk adjustment program. Pursuant to section 1321(a)(1)(D) of the Affordable Care Act, we propose in paragraph (a)(2) that for States that do not operate an Exchange, HHS will establish a risk adjustment program. We also clarify in (a)(3) that HHS will administer all of the risk adjustment functions for any State that elects to establish an Exchange but does not elect to administer risk adjustment. In paragraph (b), we clarify that the State may elect to have an entity other than the Exchange perform the risk adjustment functions of this subpart provided that the selected entity meets the requirements for eligibility to serve as the Exchange proposed in § 155.110 of the notice of proposed rulemaking entitled, ''Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans.''

In paragraph (c), we propose timeframes for completion of the risk adjustment process. We propose that all payment calculations must commence with the 2014 benefit year. The Affordable Care Act does not explicitly set forth a timeframe by which risk adjustment programs must start. However, we believe risk adjustment must be coordinated with reinsurance and risk corridors to help stabilize the individual and small group markets and ensure the viability of the Exchanges, which begin in 2014. Timely completion of the risk adjustment process is important because risk adjustments affect calculations of both risk corridors and the rebates specified under section 2718 of the PHS Act. By law, HHS will be performing the risk corridors calculations for all qualified health plans (QHP) in all States. Therefore, we seek comment on the appropriate deadline by which risk adjustment must be completed. For example, HHS may require that States complete risk adjustment activities by June 30 of the year following the benefit year. This timing assumes at least a three-month lag from items and services furnished in a benefit year and the end of the data collection period. This approach is similar to the Medicare Advantage (Part C) risk adjustment data submission, in which the annual deadline for risk adjustment data submission is 2-months after the end of the 12-month benefit period, but may, at CMS's discretion, include a 6-month lag time.

Since risk adjustment is designed as a budget neutral activity, States would likely need to receive remittances from issuers of low actuarial risk plans before making payments to issuers of high actuarial risk plans. We seek comment on an appropriate timeframe for State commencement of payments.

To ensure the each State's risk adjustment program is functioning properly, we believe that States should provide HHS with a summary report of risk adjustment activities for each benefit year in the year following the calendar year covered in the report. The summary report should include the average actuarial risk score for each plan, corresponding charges or payments, and any additional information HHS deems necessary to support risk adjustment methodology determinations. We seek comment on the requirements for such reports, including data elements and timing.

3. Federally-Certified Risk Adjustment Methodology (§ 153.320)

Section 1343(b) of the Affordable Care Act requires HHS to establish criteria and methods for risk adjustment in coordination with the States. We interpret this provision to mean that HHS will establish a baseline methodology to be used by a State, or HHS on behalf of the State, in determining average actuarial risk. To fulfill the terms of that basic requirement, we propose in paragraph (a)(1) a Federally-certified risk adjustment methodology that will be developed and authorized by HHS. Section 1343 indicates that the Secretary may utilize criteria and methods similar to the criteria and methods utilized under part C or D of title XVIII of the Social Security Act. We seek to minimize issuer burden and will leverage existing processes of part C and D wherever appropriate while recognizing the differences in market demographics in determining methodologies.

We considered proposing a requirement that all States utilize a Federally-certified risk adjustment methodology that was developed and promulgated by HHS. However, we recognize that States may have alternative methods that can achieve similar results. We also know that some States have already implemented risk adjustment models for programs such as Medicaid. We believe that the terms ''methods and criteria'' in the Affordable Care Act can be interpreted to allow certain levels of State variation provided that States meet basic Federal standards. Therefore, we propose in paragraph (a)(2) that a State-submitted alternative risk adjustment methodology may become a Federally-certified risk adjustment methodology through HHS certification. States that would like to use other methodologies should view the Federally-certified risk adjustment methodology as a comparative standard for their alternate risk adjustment methodologies. A State's alternate risk adjustment methodology should offer similar or better performance in that State than the Federally-certified risk adjustment methodology as determined based on the criteria set forth in § 153.330(a)(2). After HHS approves a State alternative risk adjustment methodology, that methodology is considered a Federally-certified risk adjustment methodology.

We propose in paragraph (b) of this section that a State that is operating a risk adjustment program must use one of the Federally-certified risk adjustment methodologies that HHS will publish in a forthcoming annual Federal notice of benefit and payment parameters or that has been published by the State in that State's annual notice, as described in § 153.110(b). These notices will include a full description of the risk adjustment model, including but not limited to: demographic factors, diagnostic factors, and utilization factors if any; the qualifying criteria for establishing that an individual is eligible for a specific factor; the weights assigned to each factor; the data required to support the model; and information regarding the deadlines for data submission and the schedule for risk adjustment factor determination. We seek comments on other information that should be included in this notice.

In paragraph (b)(2), we propose that the risk adjustment methodology will also describe any adjustments made to

the risk adjustment model weights when calculating average actuarial risk, including premium rating variation. Under section 2701 of the PHS Act as amended by the Affordable Care Act, issuers may vary rates within defined maximum ranges based on age and tobacco use. Plans may also vary rates by geographic rating area and family size. An approach is needed to account for this allowed variation in rating so that risk adjustment does not adjust for the actuarial risk that issuers have been allowed to incorporate into their premium rates.

We invite comments on possible approaches to achieving the stated policy goals. In particular, we request comments on the implications of approaches for market efficiency, potential incentives created in how issuers set rates, and how approaches address allowed rating variation for age, family size, and tobacco use. We request comments on other approaches to determining average actuarial risk and whether links exist between potential actuarial risk methodology and potential payments and charges methodology as described in § 153.345. We also request comments on the extent of State flexibility that should be allowed in adopting an approach to determine average actuarial risk.

In paragraph (c), we propose that HHS will specify in a forthcoming annual Federal notice of benefit and payment parameters the Federally-certified risk adjustment methodology that will apply when the Federal government operates the risk adjustment program in States that do not elect to operate an Exchange, or that elect to operate an Exchange but not a risk adjustment program.

To assist States in assessing a potential alternate risk adjustment methodology, HHS will publish the basic standards any alternate risk adjustment methodology must meet in the forthcoming annual Federal notice of benefit and payment parameters that contains the details of one or more Federally-certified risk adjustment methodologies. These standards will likely include the minimum number or types of factors that must be included and the statistical metrics the models will be expected to achieve. Prior to that formal publication of standards, and as part of the development of the Federally-certified methodologies and associated standards for alternate risk adjustment methodologies, HHS will consult with States regarding its development and the minimum standards for alternate risk adjustment methodologies. States may use information from the consultation process to either develop their own methodologies or decide to utilize the Federally-certified risk adjustment methodology.

The statute is not specific with respect to the method by which States are expected to determine the precise value of payments and charges. We believe the payments and charges methodology should mitigate the financial impact of adverse selection on risk adjustment covered plans, while limiting overall issuer uncertainty. We have identified two methods that may achieve those goals—multiplying plan average actuarial risk by the State average normalized premiums and multiplying plan average actuarial risk by the specific premiums collected for each plan. To determine the precise value of payments and charges using State average normalized premiums, plan average premiums are first normalized to the actuarial value of their benefits by dividing each plan's premiums by the plan's actuarial value. This step is necessary because plan premiums reflect differences in the benefits and administration, including actuarial value.

Next, States would use these normalized average premiums as the basis for the State normalized average premiums, weighted by enrollee months, for all plans in a specific risk pool. The State normalized average premium represents the premium that will be used in the charges and payments calculation. Next, the amount by which a plan's average actuarial risk deviates from the state average actuarial risk is calculated. This deviation in actuarial risk is multiplied by the State normalized average premium, the plan's enrollee months, and the plan's actuarial value.

The alternative methodology uses plan-specific premiums as the basis for calculating the gross plan charges and gross plan payments, assuming that health plan premiums reflect State average actuarial risk and the expectation that risk adjustment accounts for favorable or adverse selection. Under this methodology, the deviation in actuarial risk is multiplied by the aggregated plan premiums to determine the gross plan charges and total plan payments that should be collected from or disbursed to health plans through risk adjustment. We request comment on the validity of these assumptions, including the two methods described, and any alternative methods that could be used to calculate payments and charges that would reduce uncertainty for plans. Finally, we request comment on any intentional and unintentional consequences from the use of either methodology.

Due to premium variance, we expect inequalities between payments and charges, which could result in aggregate surpluses or deficits if a simple collection of gross plan charges and disbursement of gross plan payments is implemented. We have identified at least three methods for adjusting gross calculations when gross plan payments are greater than gross plan charges: decrease plan payments on a prorated basis to equal plan charges; increase plan charges on a prorated basis to equal plan payments; or split the shortfall between high-risk and low-risk plans and pro-rating in both directions. We also identified two methods for when gross plan charges are greater than the sum of gross plan payments: reducing gross plan charges on a prorated basis such that the net plan charges are sufficient to cover total plan payments; and putting excess plan charges in a reserve account that would provide a margin of error to ensure that all necessary payments can be covered by charges.

We request comment on these methodologies and whether there are alternative methodologies that might be used, including their strengths, limitations, intentional or unintentional consequences and any links that exist between the payments and charges methodology and the actuarial risk methodology.

4. State Alternate Risk Adjustment Methodologies (§ 153.330)

We interpret the statutory provision regarding the Secretary's establishment of criteria and methods for risk adjustment under section 1343(b) to require substantive Federal oversight of the risk adjustment process. Accordingly, while we propose to allow States to utilize alternate risk adjustment methodologies, we also propose in paragraph (a) of § 153.330 that States taking advantage of this flexibility must submit their proposed alternate risk adjustment methodologies for HHS review and certification.

As outlined in paragraph (a)(1), the State request must include certain information about the State's proposed risk adjustment methodology. As noted in paragraph (a)(1)(i), any request must identify the risk pools to which the methodology will apply. Paragraph (a)(1)(ii) also indicates that the proposed risk adjustment methodology must include a full description of the risk adjustment model, consisting of: factors employed in the model; weights associated with each factor; the data collection method; the schedule for data collection and risk adjustment factor calculation; and the calibration

methodology. HHS will also review the relevant statistical performance metrics of the model, such as R-squared or predictive ratios, which indicates the predictive power of the model. If the State wants to use a Federally-certified risk adjustment model but with State-specific weights, retaining all other characteristics of that model, the State would only need to provide the State-specific weights and a description of the calibration methodology, as well as an attestation that all other model attributes will be implemented consistently with the Federally-certified methodology.

As with the Federally-certified risk adjustment methodology, the schedule for collection and submission of data and calculation of factors are critical success elements for any State-proposed alternate risk adjustment methodology. If a State proposes to deviate from the Federally-certified methodology with respect to these elements, HHS expects to evaluate a State proposed alternate risk adjustment methodology to ensure that the proposed approach will meet HHS goals for the risk adjustment program.

We propose in paragraph (a)(1)(iii) that States must describe any adjustments they propose to make to the risk adjustment model weights when determining average actuarial risk. We expect that States will also incorporate a rating factor into the proposed risk adjustment methodology.

In paragraph (a)(2), we propose that all requests be evaluated against criteria that HHS establishes for risk adjustment methodologies. Alternate risk adjustment methodologies should be evaluated based on the extent to which the methodology: accurately explains cost variation within a given population; chooses risk factors that are clinically meaningful to providers; encourages favorable behavior and discourages unfavorable behavior; uses data that is complete, high in quality and available in a timely fashion; provides stable risk scores over time and across plans; and minimizes administrative burden. This criteria is based on the principles that guided the creation of the hierarchical condition categories (HCC) model used in Medicare's risk adjustment program, as well as criteria described by AcademyHealth in its 2004 risk assessment paper (see *http://www.hcfo.org/pdf/riskadjustment.pdf*) and criteria described by the American Academy of Actuaries in its 2010 risk adjustment paper (see *http://www.actuary.org/pdf/health/Risk_Adjustment_Issue_Brief_Final_5-26-10.pdf).*

To ensure the stability and predictability of payments, we contemplated proposing that requests must be submitted to HHS no later than early November in the calendar year two years before the effective date. HHS recognizes that health insurance issuers must have detailed information about risk adjustment prior to setting rates for any benefit year because the risk adjustment methodology will affect both the total value of premiums received after accounting for payments and charges, as well as health plan administrative costs. Therefore, under this scenario, HHS would evaluate the proposed alternate risk adjustment methodologies submitted within the required timeframes and notify States within 60 days, at the time of the publication of the forthcoming annual Federal notice of benefits and payment parameters whether such methodologies have been certified. In this scenario, if HHS approves an alternate risk adjustment methodology, such a methodology would be considered a Federally-certified risk adjustment methodology and could be implemented in the State that proposed the methodology as well as any other State that elects to implement an Exchange.

We recognize that the above contemplated timeframe requires States to submit requests for alternate methodology certification only 30 days after the advance annual Federal notice of benefit and payment parameters and prior to publication of the final annual Federal notice of benefit and payment parameters. However, we believe any advantage in allowing States additional time would be offset by a lesser ability to leverage State alternative models and inadequate time for issuers to reflect methodology decisions in setting rates. We seek comments regarding our contemplated timeline and potential alternatives for States to request submissions for alternate risk adjustment methodology.

In paragraph (b), we propose that States that operate a risk adjustment program must renew HHS certification of alternate risk adjustment methodologies whenever changes occur, including at the time of recalibration, which the State must identify when initially requesting certification for the alternate risk adjustment model. The proposed requirements for describing an update to a certified risk adjustment model are the same as those for the initial model. The State must describe any change to the model between the last certified version and the recalibrated version. For example, if the only change was to the schedule for data submission, then the State would need to provide that update when seeking certification. Additionally, we propose that States send a notification if they intend to use the certified alternate risk adjustment model with no changes to any of the basic parameters. We expect to use this certification process to ensure that States make updates to their alternate risk adjustment methodologies at reasonable intervals.

5. Data Collection Under Risk Adjustment (§ 153.340)

As described above, a robust risk adjustment process requires data to support the determination of an individual's risk score and the corresponding plan and State averages. In paragraph (a) we propose that a State, or HHS on behalf of the State, is responsible for collecting the data for use in determining individual risk scores.

HHS considered three possibilities for data collection: (1) A centralized approach in which issuers submit raw claims data sets to HHS; (2) an intermediate State-level approach in which issuers submit raw claims data sets to the State government, or the entity responsible for administering the risk adjustment process at the State level; and (3) a distributed approach in which each issuer must reformat its own data to map correctly to the risk assessment database and then pass on self-determined individual risk scores and plan averages to the entity responsible for assessing risk adjustment charges and payments.

A fully distributed approach would leverage existing infrastructures established to support Exchanges. A distributed approach also keeps individual-level data with the issuers, eliminating privacy risks related to transmission. However, there is reason to be concerned that some issuers would make errors in calculating individual risk scores and plan averages. Furthermore, we believe that the complicated nature of a distributed risk adjustment model may prove challenging for some issuers, especially smaller issuers and would thus require significant involvement by the State, or HHS on behalf of the State. In addition, this approach would require issuers to be able to respond to multiple queries to support other functions, such as data to recalibrate the Federally-certified risk adjustment model, reconciling cost-sharing reductions payments, verifying risk corridor submissions, or auditing cost-sharing reductions or reinsurance payments. We seek comment on use of this data for auditing purposes. We believe the proposed intermediate approach would result in the most

complete, actuarially sound risk adjustment methodology and provides support for other functions that also require encounter level data, while maintaining State flexibility. We recognize this approach may raise concerns related to consumer privacy and standard submission formats. Accordingly, we propose national standards to address each of these issues. We seek comment on the proposed approach, as well as comments on the potential advantages and disadvantages of the alternative approaches.

We propose in paragraph (b) that States, or HHS on behalf of the State, use standard HIPAA transaction standards for data collection. We note that HIPAA provides measures to achieve cost savings through administrative simplification. As described in Health Insurance Reform: Standards for Electronic Transactions, ''The purpose of this part is to improve the efficiency and effectiveness of the health care system, by encouraging the development of a health information system through the establishment of standards and requirements to enable the electronic exchange of certain health information.'' (65 FR 50312) ''We estimated that the impact of the proposed rules would result in net savings to health plans and health care providers of $1.5 billion during the first 5 years; use of the standards would continue to save the industry money.'' (65 FR 50345)

Although the transaction standards promulgated under the HIPAA administrative simplification provisions do not specifically apply to data collections under section 1343 of the Affordable Care Act, we propose in paragraph (b)(1) and (b)(2) to require States to utilize two specific HIPAA transaction standards for risk adjustment data collection: the ASC X12N 837 Health Care Claim transaction standard for any claims-related data including encounters; and the ASC X12N 834 Enrollment and Maintenance transaction standard for any enrollment or demographic data. In this paragraph, we also allow the use of the NCPDP claims transaction standard for prescription drug, claims and encounter data. We solicit comment on whether we should rely on the existing HIPAA and NCPDP standards or engage stakeholders to develop a new set of national standards for use in risk adjustment, for example, leveraging the claims standards developed with stakeholder input by the Agency for Healthcare Research and Quality. In paragraph (b)(3), to address consumer privacy concerns, we propose that States must utilize specific privacy standards in its data collection risk adjustment procedures. We solicit comments on whether submission of issuers' rate setting rules should be required.

We believe that standardizing data collection will allow State flexibility in modeling while not unreasonably increasing issuer burden for multi-State issuers. Under the proposed approach, States may limit the minimum information required to specific data elements, provided that the information submitted represents standard code sets and values on the HIPAA transactions. We also propose that States must accept any valid transaction submitted by an issuer provided that the transaction contains the minimum data required by the State. In other words, the State may not reject a HIPAA compliant transaction strictly on the basis that it contains more data than the State requires.

In paragraph (c), we propose that States with existing all payer claims databases may request an exception from the minimum standards for data collection. We are contemplating syncing the timing of the request submission with requirements for alternate risk adjustment models. Similarly, we are contemplating that HHS will notify States as to exception status concurrently with the publication of the forthcoming annual Federal notice of benefit and payment parameters. We seek comment on these contemplated timelines. We propose that requests for exception from minimum data collection standards must include technical specifications, as well as proposed modifications to support risk adjustment and other claims-related activities.

Seeking data submission efficiencies, in paragraph (d), we propose that the State must make certain claims and encounter data collected under risk adjustment available to support other activities including: recalibrating Federally-certified risk adjustment models; verifying of risk corridor submissions; and verifying and auditing reinsurance claims. We also anticipate encounter and claims data collected for risk adjustment may be required to support other Exchange-related functions such as cost-sharing requirements and quality reporting. We solicit comment on these alternative uses of risk adjustment data.

6. Risk Adjustment Data Validation Standards (§ 153.350)

In § 153.350, we propose that States have a reliable data validation process, which is essential to the establishment of a credible risk adjustment program. The credibility of risk adjustment is important to establishing the issuer confidence required for risk adjustment to have a positive impact on premium reduction. We propose that States, and HHS, when HHS performs the risk adjustment function on behalf of States, will perform some form of validation regarding the data submitted. We also believe that issuers will want such data validations to be performed since the effect of risk adjustment will be a transfer of premiums between issuers. One of the critical aspects of risk adjustment under the Affordable Care Act is that it represents a relative actuarial risk calculation. Therefore, for any data validation to have the capacity to extrapolate to adjust specific charges and payments, the validation must cover a sufficient number of plans to allow an equitable adjustment to all health plan risk adjustment factors.

In paragraph (a) of § 153.350, we propose that the State, or HHS on behalf of the State, validate a statistically valid sample of all issuers that submit data for risk adjustment every year. We also propose an appropriate use of the information derived from the data validation. For a validation to work under this form of risk adjustment, States must be able to adjust the average actuarial risk of each plan to account for the inaccuracies noted during the data validation process. As such, we propose in paragraph (b) that the State, or HHS on behalf of the State, may adjust the average actuarial risk for each plan based on the error rate found in the validation. In paragraph (c), we further propose that the State, or HHS on behalf of the State, adjust payments and charges based on the changes to average actuarial risk. We seek comment on appropriate timeframes for completion of the data validation process. For example, we may propose a three-year deadline for completing data validation, so as to ensure some finality in the risk adjustment process. Finally, in paragraph (d), we propose that States, or HHS on behalf of the State, must provide an appeals process for issuers. We believe that there may be alternative methods that allow sufficient coverage to estimate the validation impact on all plans. We solicit comments on this data validation provision and any alternatives that may be able to satisfy the need to provide assurance that the charges and payments truly represent relative plan risk.

E. Subpart E—Health Insurance Issuer Standards Related to the Transitional Reinsurance Program

In this subpart, we propose requirements for health insurance issuers that complement the requirements for the transitional reinsurance program fully described in the preamble for subpart C. Since the reinsurance program is operated at the State level, many elements related to the purpose, methods, and operation of this program will vary across States and are discussed in greater detail in the preamble for subpart C. In this subpart, we discuss the elements of the program that relate specifically to the requirements for health insurance issuers and third party administrators on behalf of self-insured group health plans.

1. Reinsurance Contribution Funds (§ 153.400)

In § 153.400, we codify section 1341 of the Affordable Care Act, which requires that the reinsurance program be funded by contribution funds from contributing entities. In paragraph (a), we propose that all contributing entities make contributions, in a frequency and manner to be determined by the State or HHS, to the applicable reinsurance entity in the State. For example, contributing entities may be required to submit contributions on a monthly or quarterly basis starting in January 2014. We invite comments on the appropriate frequency and manner in which payments should be made by contributing entities.

In paragraph (b), we propose that if any State establishes multiple applicable reinsurance entities, the contributing entities must contribute an appropriate payment to each applicable reinsurance entity according to the formula established by the State. We propose in paragraph (c) that contributing entities will be required to provide the data necessary for the applicable reinsurance entity to calculate the amounts due from each contributing entity. The type of data required will depend on the contributing entity. For contributing entities in the individual and fully insured market, we propose that data on enrollment and premiums be required. For contributing entities in the self-insured market, data on covered lives and total medical expenses would be required. This data, for example, could be collected on a monthly or quarterly basis beginning January 2014. We invite comments on the appropriate timing to collect data submissions from contributing entities. We also seek comment on whether there are existing sources of this data that can be drawn upon.

2. Requests for Reinsurance Payment (§ 153.410)

The reinsurance program as proposed in subpart C will make payments to reinsurance-eligible plan issuers. In paragraph (a), we propose that reinsurance-eligible plan issuers must submit a request for reinsurance payment to the applicable reinsurance entity. We propose in paragraph (b) that this request is made according to the method that will be specified in the forthcoming annual Federal notice of benefit and payment parameters. We invite comments regarding methods for requesting payments, and the frequency and deadline for such requests. We also invite comments on how to manage late claims from reinsurance eligible plan issuers.

F. Subpart F—Health Insurance Issuer Standards Related to the Temporary Risk Corridors Program

In this subpart, we propose requirements on health insurance issuers related to the temporary risk corridor program. Section 1342 of the Affordable Care Act establishes a program of risk corridors for the first three years of Exchange operation. In addition to risk adjustment and reinsurance, the risk corridor program limits adverse selection and stabilizes markets as changes are implemented starting in 2014. Risk corridors create a mechanism for sharing risk for allowable costs between the Federal government and QHP issuers. QHP issuers of QHPs with costs that are less than 97 percent of the QHP's costs projections will remit charges for a percentage of those savings to HHS, while QHP issuers of QHP's with costs greater than 103 percent of cost projections will receive payments from HHS to offset a percentage of those losses. The Affordable Care Act directs HHS to administer the risk corridors program.

1. Definitions (§ 153.500)

In § 153.500, we propose a number of definitions for the purpose of administering risk corridors. First, we define ''allowable costs'' as an amount equal to the total medical costs, which include clinical costs, excluding allowable administrative costs, paid by the QHP issuer in providing benefits covered by the QHP. We define ''allowable administrative costs'' as total non-medical costs defined in § 158.160(b), including costs for the administration and operation of the health insurance issuer. We invite comment on whether we should consider costs for activities that improve health care quality as described in § 158.150 and § 158.151 for allowable costs to be consistent with the medical loss ratio (MLR) policy in the Affordable Care Act. We also invite comment on whether we should limit administrative costs to 20 percent consistent with MLR. If the allowable administrative costs differ from calculations for the MLR rebate, issuers may be incentivized to use risk corridors payments to pay for their MLR rebates.

We define ''charge'' as the flow of funds from QHP issuers to HHS. We define ''direct and indirect remuneration'' in the same way it was defined in the risk corridor provision implemented as a result of Medicare Prescription Drug, Improvement, and Modernization Act of 2003. It means prescription drug price concessions or similar benefits from manufacturers, pharmacies or similar entities obtained by a QHP issuer or an intermediary contracting organization with which a QHP issuer has contracted. Such concessions include but are not limited to: discounts, charge backs, rebates, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, and grants. We further specify that the term applies regardless of whether the intermediary contracting organization retains all or a portion of the direct and indirect remuneration or passes the entire direct and indirect remuneration to the QHP issuer and regardless of the terms of the contract between the issuer and the intermediary contracting organization.

We define ''payment'' as the flow of funds from HHS to QHP issuers. We define ''qualified health plan'' consistent with the term proposed in the general definitions section of the Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, published in this issue of the **Federal Register**. We define ''risk corridor'' as any payment adjustment system based on the ratio of allowable costs of a plan to the plan's target amount. Finally, we define ''target amount'' to be the amount equal to the total premiums incurred by the QHP, including any premium tax credits or financial assistance from any governmental program, reduced by the allowable administrative costs of the health insurance issuer.

2. Risk Corridor Establishment and Payment Methodology (§ 153.510)

The risk corridor provision in 1342 of the Affordable Care Act directs HHS to

establish and administer a program of risk corridors. In § 153.510, HHS proposes to establish risk corridors by specifying risk percentages above and below the target amount. In paragraph (a), we propose to require a QHP issuer to adhere to the requirements set by HHS for the establishment and administration of a risk corridor program for calendar years 2014 through 2016. We will issue guidance in the forthcoming annual Federal notice of benefits and payment parameters for QHPs regarding reporting and the administration of payments and charges similar to part 158. Risk corridors guidance will be plan specific and not issuer specific as indicated in part 158. We interpret the risk corridor provision to apply to all QHPs offered in the Exchange.

In § 153.510, we also establish the payment methodology for the risk corridor program, using the thresholds and risks-sharing levels specified in statute. The risk corridor thresholds are applied when a QHP's allowable costs reach plus or minus three percent of the target amount. Accordingly, HHS will pay a QHP issuer whose QHP incurred allowable costs for a benefit year that are greater than 103 percent of its target amount. Conversely, a QHP issuer must pay HHS if its QHP's allowable costs for a benefit year are less than 97 percent of its target amount. A QHP issuer whose QHP's allowable costs for a benefit year are greater than 97 percent but less than 103 percent of the target amount will neither make nor receive payments for risk corridors. For example, a QHP issuer with a QHP that has a target amount of $10 million will not receive or pay a risk corridor payment if its allowable charges range between $9.7 million and $10.3 million.

Paragraph (b) of this section describes the method for determining payment amounts to QHP issuers as well as the timing of those payments. For a QHP with allowable costs in excess of 103 percent but not more than 108 percent of the target amount, HHS will pay the QHP issuer 50 percent of the amount in excess of 103 percent of the target amount. For example, a QHP has a target amount of $10 million, and the QHP has allowable costs of $10.5 million, or 105 percent of the target amount. Since 103 percent of the target amount would equal $10.3 million, the amount of allowable costs that exceed 103 percent of the target amount is $200,000. Therefore, HHS would pay 50 percent of that amount, or $100,000 to the QHP issuer.

For QHPs that have allowable costs that exceed 108 percent of the target amount, the Affordable Care Act directs HHS to pay the QHP issuer an amount equal to 2.5 percent of the target amount plus 80 percent of the amount in excess of 108 percent of the target amount. For example, a QHP has a target amount of $10 million. The QHP has allowable costs of $11.5 million, or 115 percent of the target amount. Since 108 percent of the target amount would be $10.8 million, the amount of allowable costs that exceed 108 percent of the target amount is $700,000. Therefore, HHS pays 2.5 percent of the target amount, or $250,000, plus 80 percent of $700,000, or $560,000, for a total of $810,000.

Paragraph (c) describes the circumstances under which QHP issuers will remit charges to HHS, as well as the means by which HHS will determine those charge amounts. We propose that QHP issuers will begin to remit charges to HHS for the first dollar of allowable charges less than 97 percent of the target amount. For a QHP that has allowable costs that are less than 97 percent of the target amount but greater than 92 percent of the target amount, HHS will charge the QHP issuer an amount equal to 50 percent of the difference between 97 percent of the target amount and the actual value of allowable costs. For example, a QHP has a target amount of $10 million. The amount of allowable costs for this QHP is $9.3 million, or 93 percent of the target amount. The difference between 97 percent of the target amount, or $9.7 million, and the actual allowable charges is $400,000. The QHP issuer must pay HHS 50 percent of that amount, or $200,000.

For QHPs with allowable costs below 92 percent of the target amount, the QHP issuer will remit charges to HHS an amount equal to 2.5 percent of the target amount plus 80 percent of the difference between 92 percent of the target amount and the actual value of allowable costs. For that same QHP with a $10 million target amount, assume the allowable charges are now $8.8 million, or 88 percent of the target amount. Ninety-two percent of the target amount would be $9.2 million, and the difference between 92 percent of the target amount and the actual value of allowed costs is $400,000. The QHP issuer will remit charges to HHS an amount equal to 2.5 percent of the target amount, or $250,000, plus 80 percent of $400,000, or $320,000, for a total of $570,000.

While we are not proposing deadlines at this time, HHS has considered timeframes for QHP issuers to remit charges to HHS. For example, a QHP issuer required to make a risk corridor payment may be required to remit charges within 30 days of receiving notice from HHS. Similarly, HHS would make payments to QHP issuers that are owed risk corridor amounts from HHS within a 30-day period after HHS determines that a payment should be made to the QHP issuer. We believe that QHP issuers who are owed these amounts will want prompt payment, and also believe that the payment deadlines should be the same for HHS and QHP issuers. We invite comments as to the appropriate frequency QHP issuers should remit charges to HHS.

3. Risk Corridor Standards for QHP Issuers (§ 153.520)

To support the risk corridor program calculations, we propose in § 153.520 that all QHP issuers submit data needed to determine actual performance relative to their target amounts. The data would be collected in standard formats specified by HHS. We propose in paragraph § 153.520(a) that QHP issuers must submit data related to actual premium amounts collected by QHP issuers, including premium amounts paid by parties other than the enrollee in a QHP and specifically advance premium tax credits paid by the government. We also regard risk adjustment and reinsurance as an after-the-fact adjustment to premiums for purposes of determining risk corridor amounts. Medicare Advantage, Medicare Prescription Drug Benefit Program and Medicaid managed care risk adjustment programs similarly result in adjustments to total payments to plans. However, in these programs, the adjustment occurs concurrently with payments because they are made by the government (excluding monthly premium payments made by beneficiaries). For reinsurance, we anticipate health insurance issuers will reduce their premiums by an amount that would approximate the average reinsurance that they expect to receive, filling in the gap between the premium charged and the health insurance issuer's revenue needs.

Therefore, in paragraph (a)(1), we propose that the reported premium amounts must be increased by the amounts paid to the QHP issuer for risk adjustment and reinsurance. Similarly, we propose in paragraph (a)(2) that the reported premium amounts be reduced for any risk adjustment charges the QHP issuer pays on behalf of the plan, reinsurance contributions that the QHP issuer makes on behalf of the plan, and Exchange user fees that the QHP issuer pays on behalf of the plan. We invite comment on the treatment of reinsurance and risk adjustment as after-the-fact adjustments to premium for purposes of determining risk corridor amounts.

In paragraph (a)(3), we propose rules for accounting for reinsurance claims submitted on a date to be determined by HHS for a given reinsurance benefit year. Specifically, we propose that QHP issuers attribute reinsurance payments to risk corridors based on the date on which the valid reinsurance claim was submitted. For example, if the QHP issuer submits a claim on or before the deadline for a benefit year, that QHP issuer would attribute the claim payment to risk corridor calculation for the benefit year in which the costs were accrued. Conversely, if the QHP issuer submits a claim after the deadline for a benefit year, that health QHP would attribute the claim payment to risk corridor calculation for the following benefit year. We invite comments on how the risk corridor calculations would interact with the MLR process.

We propose in paragraph (b) that QHP issuers must submit allowable cost data to calculate the risk corridors in a format specified by HHS. We propose that allowable costs must be reduced for any direct or indirect remuneration received in paragraph (b)(1). In paragraph (b)(2), we also propose that the allowable costs must be reduced by the amount of any cost-sharing reductions received from HHS. We invite comment on an appropriate deadline for QHP issuers to complete submission of all risk corridor data especially since this would interact with the MLR process. We also invite comment as to how HHS could determine allowable costs for QHP issuers in calculating risk corridors, if a QHP issuer fails to comply with the reporting provisions in paragraph (b).

HHS seeks to limit the reporting requirements on issuers in submitting this information and would like to prevent duplicative data collection requirements on issuers for the temporary risk corridors program. As such, we seek comment on how we can utilize data from 2718 to meet the data submission requirements for risk corridors.

G. Subpart G—Health Insurance Issuer Standards Related to the Risk Adjustment Program

Section 1343 of the Affordable Care Act provides for a program of risk adjustment for all non-grandfathered plans in the individual and small group market both inside and outside of the Exchange. We noted in the introduction to subpart D of this part that the risk adjustment program described in section 1343 employs a model to determine comparative actuarial risk of plans within a State. That overview can serve as a reference for this subpart as well. We note that subpart D of this part describes some of the comments to the RFC related to risk adjustment and our approach to the process, methodology, and model for implementing the risk adjustment program under section 1343 of the Affordable Care Act. This subpart proposes the health issuer standards that are necessary to carry out risk adjustment as described in subpart D.

1. Definitions (§ 153.600)

In § 153.600, we define ''risk adjustment data'' to mean any data that is used in a risk adjustment model.

2. Risk Adjustment Issuer Requirements (§ 153.610)

We propose in paragraph (a) of § 153.610 that all issuers of risk adjustment covered plans submit risk adjustment data according to the timetable and format prescribed by the State, or HHS on behalf of the State. Since there will be some variety in approaches to risk adjustment, both across States as well as over time, we expect that these data will include demographic data; encounter data for items and services provided in conjunction with a risk adjustment covered plan; and prescription drug utilization data. We seek comment on whether other categories of data such as methods for setting rates should be required in support of risk adjustment.

We considered proposing the following timelines for risk adjustment data submission: claims and encounter data must be submitted every 30 days and no later than the end of 180 days following the date of service; enrollment and demographic information must be submitted by the end of the month following enrollment; issuer rate-setting rules must be submitted by the end of the month in which they become effective; prescription drug utilization data must be submitted every 30 days, and no later than the end of 90 days following date of service. We recognize that these timeframes may limit the ability of States to collect a full calendar year of data on risk adjustment. However, given the traditional lag of claims submissions, we did not think a shortened timeframe was feasible. Additionally, monthly data submission would address anticipated issuer difficulty in transmitting large volumes of data at the end of the data collection period. We solicit comments on these and alternative data submission timeframes.

We interpret the Affordable Care Act to require participation in the risk adjustment program for all risk adjustment covered plans. We believe that any voluntary participation provisions would result in non-participation by the lowest actuarial risk plans, which in turn would defeat the purpose of the provision. Additionally, in paragraph (b), we propose to permit contractual arrangements between issuers and providers, suppliers, physicians, and other practitioners to ensure that issuers receive the necessary risk adjustment data.

We discuss the calculation of payments and charges extensively describing the methods by which we propose States could perform that function. After the State, or HHS on behalf of the State, has calculated all payments and charges for all risk adjustment covered plans, the State, or HHS on behalf of the State, will determine a net value of payments and charges for each risk adjustment covered plan issuer. In paragraph (c), we propose that risk adjustment covered plan issuers who owe a net balance of risk adjustment charges will be assessed those net charges upon completion of the risk adjustment process. We interpret the Affordable Care Act to mean that the payment of charges is mandatory for issuers who have a net charges payable balance based on the difference between the charges calculated for their low actuarial risk plans and the payments calculated for their high actuarial risk plans. Additionally, we considered proposing that issuers be given a 30 day timeframe in which to pay all these net charges to the State that assessed those charges, or to HHS on behalf of the State. We solicit comment on this and alternative timelines. Since risk adjustment pools individual and small group market risk on a State level, payments and charges will be netted out at the State level, and issuers in multiple States must settle with each State individually.

3. Compliance With Risk Adjustment Standards (§ 153.620)

The credibility of risk adjustment is important to making health insurance premiums in Exchanges stable. Issuers should have confidence that, if they experience adverse selection, their actuarial risk as calculated under this risk adjustment program will reflect the degree to which they have experienced adverse selection and that, if competing plans have low actuarial risk, that those plans cannot inflate their risk score. Therefore, a data validation program is necessary. Consistent with proposed § 153.350, we propose in § 153.620 that risk adjustment covered plan issuers provide the required documentation in response to any HHS or State validation to substantiate the risk adjustment data that they have submitted. We believe

that all risk adjustment covered plans should support such an audit to ensure the integrity of charges they may be required to pay, as well as to ensure that any payments they receive are sufficient to cover additional medical costs incurred due to adverse selection. In paragraph (b), we propose that risk adjustment covered plan issuers must retain the required documentation to substantiate the risk adjustment data that they have submitted for a period of ten years.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Below is a summary of the proposed information collection requirements outlined in this regulation. Throughout this section we employ assumptions regarding the frequency of data collection as this level of detail is not proposed in regulation text, but is discussed in preamble. A number of assumptions are made regarding the wages of personnel needed to accomplish the proposed collection of information. Wage rates are based on the Employer Costs for Employee Compensation report by U.S. Bureau of Labor Statistics and represent a national average. Some states or employers may face higher or lower wage burdens. Wage rates estimates include a 35% fringe benefit estimate for state employees and a 30% fringe benefit estimate for private sector employees. For purposes of presenting an estimate of paperwork burden for States, we reflect full participation of all States and the District of Columbia in operating an Exchange and assume all States operate the reinsurance and risk adjustment programs. However, we recognize that not all States will elect to operate their own Exchanges, so these estimates should be considered an upper bound of burden estimates. These estimates may be adjusted proportionally in the final rule based upon additional information as States progress in their Exchange development processes.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding the State Notice of Insurance Benefits and Payment Parameters (§ 153.100)

As discussed in § 153.100, States would issue an annual notice of benefits and payment parameters specific to that State. We estimate a minimum burden for the development of the State notice as States have the option to adopt the parameters in the forthcoming annual Federal notice of benefits and payments parameters, and would only have to indicate their intention of using these parameters in their annual notice.

We assume that all 50 States and the District of Columbia would be subject to these reporting requirements. Again, this estimate should be considered an upper bound, and we may revise these estimates in the final rule based upon additional information as States progress in their Exchange development processes. We estimate that it will take each State approximately 160 hours to meet the requirements of this subpart with a total estimated burden of 8,160 hours. We estimate that it will take a financial analyst 120 hours (at an average wage rate of $62 an hour) and a senior manager 40 hours (at $77 an hour) to meet these requirements. The cost estimate for each State is $10,520 for a total estimated cost burden of $536,520.

B. ICRs Regarding State Standards for the Transitional Reinsurance Program in the Individual Market (§ 153.240)

Within Part 153, subpart C we describe reporting requirements and maintenance of records for States for reinsurance. States would ensure that the applicable reinsurance entity collects the data required from issuers to make reinsurance payments. The type of data required is currently not described in this proposed rule to allow for State flexibility in determining the data type and collection method. However, the type of data that might be used to make reinsurance payments may include claims data or encounter data. We estimate that it will take about 12 hours on an annual basis for the applicable reinsurance entity to collect this information in an electronic format from issuers on an annual basis. This estimate is similar to estimates provided in Medicare Part D rule for data submission. For example, Medicare Part D estimated that it would take plan sponsors approximately 10 hours annually for plan sponsors to submit data on aggregated negotiated drug pricing from pharmaceutical companies described in § 423.104. We provide a slightly higher estimate for the collection of data from issuers for reinsurance payments due to the complexity of the program.

States that operate an Exchange would also maintain any records associated with the reinsurance program. For this requirement, we estimate that it will take approximately 52 hours annually for States to maintain records. This is a broad estimate that includes not only the maintenance of data for the reinsurance program, but all books, records, documents, and other evidence of accounting procedures and practices related to the reinsurance program. This estimate is similar to Medicare Part D, where is was estimated that it will take 52 hours on an annual basis for plan sponsors to maintain books, records, and documents on accounting procedures and practices as described in § 423.505.

We assume that 50 States and the District of Columbia will be subject to the reporting requirements in this subpart. This estimate is an upper bound of burden as a result of the reporting requirements in this subpart; we will revise these estimates in the final rule as States progress in their Exchange development. We estimate that it will take each State approximately 64 hours to meet the provisions of this subpart for a total burden estimate of 3,264 hours. We presume that it will take a financial analyst 54 hours (at $55 an hour) and a senior manager 10 hours (at $77 an hour) to meet the reporting requirements. The burden cost estimate for each State is $3,740 for a total burden cost estimate of $190,740.

C. ICRs Regarding State Standards for the Risk Adjustment Program (§ 153.310–§ 153.340)

Part 153, subpart D describes reporting requirements for States related to the risk adjustment program. We provide minimum burden estimates in this section for the collection and submission of risk-related data, particularly encounter data, as States would be required to collect this information for Medicaid beginning in 2012.

States would be required to implement privacy standards for all data

to be collected for the risk adjustment program. We estimate it will take States approximately 40 hours to create and implement privacy standards for this data collection. This estimate presumes it will take a policy analyst 10 hours (at $55 per hour), an operations analyst 25 hours (at $55 per hour) and a senior manager 5 hours (at $77 per hour). We expect it will cost each state $2,310 to create and implement privacy standards. The total burden of this requirement is $117,810.

States may file for an exception from minimum data collection standards, as described in § 153.430(c). We estimate that filing for an exception would take 17 hours and that 5 states will elect to file for exception. This includes 15 hours for an operations analyst (at $55 per hour) and 2 hours for a senior manager (at $77 per hour). The total burden of a minimum data reporting exception is $979 and a total of $4,895.

States would also collect risk-related data from health insurance issuers. This risk-related data includes claims, encounter, demographic, and enrollment data as described in § 153.340. While we do not specify the data collection timeframe for risk adjustment data, we provide an assumption on the timing of submission of this data. We estimate that it will take an issuer approximately 12 hours to collect this data electronically on an annual basis. We estimate that it will take an operations analyst 12 hours (at $55 per hour) to collect this data annually.

States would submit to HHS de-identified claims and encounter data for use in recalibrating Federally-certified risk adjustment models. We estimate that it will take 3 hours for States to submit this information to HHS. This estimate is slightly lower that Medicare Part D estimates for data submission as discussed previously and is a minimum burden estimate for this requirement since States will have already collected this data in the format requested for the risk adjustment program. States would submit summarized claims cost for use in verifying risk corridor submissions. Again we provide a minimum burden estimate of 2 hours since States would have already collected this information for risk adjustment.

States would submit summarized and individual-level claims and encounter data from reinsurance-eligible plans for audit purposes. We estimate a minimum burden of 2 hours for States to submit this information to HHS. Finally, States would also provide claims and encounter data for Exchange-related activities such as cost-sharing requirements and quality reporting. We estimate a minimum burden of 3 hours for States to submit this information for this purpose.

We assume that all 50 States and the District of Columbia will be subject to these reporting requirements. This estimate is an upper bound of burden as a result of the reporting requirements in this subpart; we will revise these estimates in the final rule as States progress in their Exchange development. We estimate that it will take each State approximately 30 hours to meet these requirements with a total estimated burden of 1,530 hours. We presume that it will take an operations analyst 22 hours (at $55 an hour) and a senior manager 8 hours (at $77 an hour) to meet these requirements for a cost estimate of $1,826. The total estimated cost burden is $93,126.

As discussed in § 153.330, States must submit a request to HHS for review and approval of an alternate risk adjustment methodology. We estimate that 5 States will request an approval for an alternate risk adjustment methodology. We presume all states requesting approval of an alternative risk adjustment methodology will update their methodology once. We presume that it will take an operations analyst 22 hours (at $55 an hour) and a senior manager 6 hours (at $77 an hour). Updating the methodology is expected to take an operations analyst 8 hours and a senior manager 2 hours. In total, we estimate that it will take approximately 38 hours for a State electing to establish an alternate risk adjustment methodology to meet the reporting requirements with a total estimated burden of 190 hours. We expect it will cost each state $2,266 to meet these requirements. The total estimated cost burden for five States is $11,330.

States choosing to run a risk adjustment program must validate their risk adjustment data annually. We estimate data collection and validation will take an operations analyst 25 hours (at $55 per hour) and a senior manager 5 hours (at $77 per hour). The cost estimate for validating the risk adjustment data annually is $1,760 per state and a total burden of $89,760.

D. ICRs Regarding Health Insurance Issuer Standards Related to the Transitional Reinsurance Program (§ 153.400 and § 153.410)

Within part 153, subpart E we discuss reporting requirements for health insurance issuers related to the transitional reinsurance program. We would require all health insurance issuers both inside and outside of the exchange to provide enrollment and premium data (covered lives and total expenses for the self-insured market) to the applicable reinsurance entity for the estimation and collection of contributions. We also would require that health insurance issuers of reinsurance-eligible plans submit data necessary in order to receive reinsurance payment.

For the purpose of this estimate and whenever we refer to burden requirements for issuers, we utilize estimates of the number of issuers provided by the *Healthcare.gov* Web site as this site provides the best estimate of possible issuers at this time. Based on preliminary findings there are approximately 1827 issuers in the individual and small group markets. While we recognize that not all issuers will offer QHPs, we use the estimate of 1827 issuers as the upper bound of participation and burden.

We further estimate that it will take each issuer approximately 12 hours to submit enrollment and premium data electronically on an annual basis and 12 hours to submit data for reinsurance payment on an annual basis. This estimate is similar to Medicare Part D estimates as discussed previously.

As such, we estimate that it will take each issuer approximately 24 hours to comply with these requirements for a total estimated annual burden of 43,848 hours. We presume that it will take a financial analyst 16 hours (at $57 an hour) and a senior manager 8 hours (at $72 an hour) to meet these requirements. The cost estimate for meeting these requirements for each issuer is of $1,488. The total burden cost estimate for all issuers is $2,718,576.

E. ICRs Regarding Health Insurance Issuer Standards Related to the Temporary Risk Corridors Program (§ 153.520)

Within part 153, subpart F we discuss reporting requirements for qualified health plan issuers related to the risk corridors program. We would require all qualified health plan issuers to submit data on premiums collected and allowable costs. While we recognize that not all issuers will offer QHPs, we use the estimate of 1827 issuers as the upper bound of participation and burden. We further estimate that it will take each issuer approximately 12 hours to comply with this requirement on an annual basis. This estimate is similar to estimates for data submission in Medicare Part D as discussed previously with a slight increase due to the complexity of the risk corridor program. The total estimated annual burden is 21, 924 hours. We presume that it will take a financial analyst 8 hours (at $57 an hour) and a senior manager 4 hours (at

$72 an hour) for a cost estimate of $744. The total burden cost estimate for all issuers is $1,359,288.

F. ICRs Regarding Health Insurance Issuer Standards for the Risk Adjustment Program (§ 153.610–§ 153.630)

Within part 153, subpart G, we described reporting requirements for health insurance issuers related to the risk adjustment program. Health insurance issuers would be required to submit data required for risk adjustment. This data may include claims and encounter data for items and services rendered; enrollment and demographic information; issuer rate-setting rules; and prescription drug utilization data. While we do not specify the data collection timeframe for risk adjustment data, we provide an assumption on the timing of submission of this data. We estimate that it will take an issuer approximately 20 hours to submit this data electronically on an annual basis. This estimate is a slight increase from the Medicare Advantage requirements for submitting data for drug claims as described for § 423.329 for Medicare Part D and reflects the complexity of risk adjustment for the Exchange program.

Health insurance issuers would also submit data for validation and verification activities to HHS and States. Again, we estimate that it will take an issuer approximately 12 hours to submit this data electronically on an annual basis as this should be data they already collect for risk adjustment. Finally, health insurance issuers would maintain risk adjustment data for a period of ten years. We estimate that it will take approximately 2 hours annually for issuers to maintain this data.

We estimate that 1827 issuers must comply with these requirements. We further estimate that it will take each issuer approximately 34 hours to meet the reporting provisions in this subpart for a total of 62,118 hours. We presume that it will take a financial analyst 30 hours (at $57 an hour) and a senior manager 4 hours (at $72 an hour) for a cost estimate of $2,002 for each issuer. The total estimated annual burden cost for all issuers is $3,657,654.

Regulation section(s)	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Labor cost of reporting per response ($)	Total labor cost of reporting ($)
153.100	51	1	160	8,160	10,520	536,520
153.240	51	1	64	3,264	3,740	190,740
153.310 & 153.340	51	1	62	3,162	3,674	187,374
153.340(c)	5	1	17	85	979	4,895
153.330	5	1	38	190	2,266	11,330
153.350	51	1	30	1,530	1,760	89,760
153.400 & 153.410	1827	1	24	43,848	1,488	2,717,576
153.520	1827	1	12	21,924	744	1,359,288
153.610 & 153.630	1827	1	34	62,118	2,002	3,657,654

Note: Salaries and fringe benefit estimates were taken from the Bureau of Labor Statistics Web site (*http://www.bls.gov/oco/ooh_index.htm*).

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* CMS Desk Officer, CMS–9975–P; *Fax:* (202) 395–5806; or *E-mail: OIRA_submission@omb.eop.gov*

IV. Summary of Preliminary Regulatory Impact Analysis

The summary analysis of benefits and costs included in this proposed rule is drawn from the detailed Preliminary Regulatory Impact Analysis, available at *http://cciio.cms.gov* under ''Regulations and Guidance.'' That preliminary impact analysis evaluates the impacts of this proposed rule and a second proposed rule ''Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans.'' The second proposed rule is published in this issue of the **Federal Register**. The following summary focuses on the benefits and costs of this proposed rule.

A. Introduction

HHS has examined the impacts of the proposed rule under Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits (both quantitative and qualitative) of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated an ''economically'' significant rule, under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Few if any insurance issuers offering comprehensive health insurance policies fell below the size thresholds for ''small'' business established by the SBA. CMS tentatively concludes that this NPRM would not have a significant impact on a substantial number of small entities. We request comment on whether the small entities affected by this rule have been fully identified.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is approximately $136 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. Because States are not required to set up an Exchange or operate reinsurance and risk adjustment, the NPRM does not impose a mandate to incur costs above that $136 million UMRA threshold on State, local, or tribal governments.

B. Need for This Regulation

This proposed rule would implement standards for States related to reinsurance and risk adjustment, and for health insurance issuers related to reinsurance, risk corridors, and risk adjustment consistent with title I of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), referred to collectively as the Affordable Care Act. These programs will mitigate the impacts of potential adverse selection and stabilize the individual and small group markets as insurance reforms and the Affordable Insurance Exchanges (''Exchanges'') are implemented, starting in 2014. The transitional State-based reinsurance program serves to reduce the uncertainty of insurance risk in the individual market by making payments for high-cost cases. The temporary Federally-administered risk corridor program serves to protect against rate-setting uncertainty in the Exchange by limiting the extent of issuer losses (and gains). On an ongoing basis, the State-based risk adjustment program is intended to protect health insurance issuers that attract high-risk populations (such as individuals with chronic conditions).

C. Summary of Costs and Benefits of the Proposed Requirements

Two proposed regulations are being published simultaneously to implement components of the Exchange and health insurance premium stabilization policies in the Affordable Care Act. The detailed PRIA evaluates the impacts of both proposed rules, while this summary focuses on the benefits and costs of the proposed requirements in this NPRM.

Methods of Analysis

This preliminary impact analysis references the estimates of the CMS Office of the Actuary (OACT) (CMS, April 22, 2010), but primarily uses the underlying assumptions and analysis done by the Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation. Their modeling effort accounts for all of the interactions among the interlocking pieces of the Affordable Care Act including its tax policies, and estimates premium effects that are important to assessing the benefits of the NPRM. A description of CBO's methods used to estimate budget and enrollment impacts is available.[1] The CBO estimates are not significantly different than the comparable components produced by OACT; the Administration is working on developing an integrated modeling capacity that will estimate Federal spending, revenue, and private premium impacts comparable to those of CBO. Based on our review, we expect that the requirements in these NPRMs will not substantially alter the estimates of the budget impact of Exchanges or enrollment. The proposed requirements are well within the parameters used in the CBO modeling of the Affordable Care Act and do not diverge from assumptions embedded in the model. Our review and analysis of the proposed requirements indicate that the impacts are within the model's margin of error.

Summary of Costs and Benefits

CBO estimated program payments and receipts for reinsurance and risk adjustment. As Exchanges do not begin operation until 2014, there are no outlays for reinsurance and risk adjustment in 2012 and 2013. CBO estimates that risk adjustment payments and collections are equal in the aggregate, but that risk adjustment payments lag revenues by one quarter. CBO did not score the impact of risk corridors, but assumed collections would equal payments to plans in the aggregate. The payments and receipts in risk adjustment, reinsurance, and risk corridors are financial transfers between issuers.

TABLE 1—ESTIMATED OUTLAYS AND RECEIPTS FOR REINSURANCE AND RISK ADJUSTMENT PROGRAMS FY 2012–FY2016

[In billions of dollars]

Year	2012	2013	2014	2015	2016
Reinsurance and Risk Adjustment Program Payments [a]			11	18	18
Reinsurance and Risk Adjustment Program Receipts [a]			12	16	18

[a] Risk-adjustment payments lag receipts by one quarter.

Source: CBO. 2011. *Letter to Hon. Nancy Pelosi.* March 20, 2010. Available at *http://www.cbo.gov/ftpdocs/113xx/doc11379/AmendReconProp.pdf.*

Benefits. Payments through reinsurance, risk adjustment, and risk corridors reduce the increased risk of financial loss that health insurance issuers might otherwise expect to incur in 2014 due to market reforms such as guaranteed issue and the elimination of medical underwriting. Insurers charge premiums for expected costs plus a risk premium, in order to build up reserve funds in case medical costs are higher than expected. Reinsurance, risk adjustment and risk corridors payments reduce the risk to the issuer and the issuer can pass on a reduced risk premium to beneficiaries.

Costs. There are administrative costs to States and Exchanges to set up and administer these risk mitigation programs. It is important to note that per section 1311 of the Affordable Care Act, States may use Exchange Planning and Establishment Grant funding to help with the development of these programs. For issuers not receiving payments, any contribution is an additional cost, which is typically passed on to beneficiaries through premium increases. There are also reporting costs for issuers to submit data and financial information.

Regulatory Options Considered

Options considered for reinsurance, risk adjustment and risk corridor programs parallel the options considered for Exchanges. These programs aim to mitigate the impacts of potential adverse selection and stabilize the individual and small group markets as insurance reforms and the Affordable Insurance Exchanges are implemented, starting in 2014. The Affordable Care Act structures reinsurance and risk adjustment as State-run programs with Federal guidelines on methodology, while it establishes risk corridors as a Federally-run program.

In addition to the proposed baseline, HHS has identified two regulatory options for this proposed rule as required by Executive Order 12866.

[1] CBO. ''CBO's Health Insurance Simulation Model: A Technical Description.'' (2007, October).

Uniform Standard for Operations of Exchange and Exchange-Related Programs

Under this option HHS would require a single standard for State operations of Exchanges, reinsurance, risk adjustment and risk corridors. This alternative model would restrict State flexibility, requiring a more uniform standard that States must enact in order to achieve certification.

State Flexibility for Operation of Exchange and Exchange-Related Programs

Under this option, States would have a great deal of flexibility around whether and how to implement Exchanges, reinsurance and risk adjustment. This alternative would allow States to develop these programs to fit their State-specific characteristics. The programs would be subject to few Federal standards.

Summary of Estimate Costs for Each Option

HHS notes that a single standard for State operations of Exchanges, reinsurance, risk adjustment and risk corridors could produce a benefit of reduced Federal oversight cost. However this option may reduce innovation and therefore limit diffusion of successful policies. HHS also notes that while State flexibility could allow for innovation for States, it would increase administrative burden on the Federal government and national issuers, as policies and procedures would vary between States. HHS proposes a middle approach that aims to limit administrative costs for temporary programs while also ensuring that the policy aims of these risk mitigation programs are met. These costs and benefits are discussed more fully in the detailed impact analysis.

D. Accounting Statement

Category	Primary estimate	Year dollar	Unit discount rate (percent)	Period covered
Benefits				
Annualized	Not estimated	2011	7	2012–2016
Monetized ($millions/year)	Not estimated	2011	3	2012–2016
Costs				
Annualized	Not estimated	2011	7	2012–2016
Monetized ($millions/year)	Not estimated	2011	3	2012–2016
Transfers				
Federal Annualized	9925	2011	7	2012–2016
Monetized ($millions/year)	9633	2011	3	2012–2016
Qualitative	Risk Adjustment transfers funds among individual and small group market health plan issuers. Reinsurance collects funds from all issuers and distributes it to individual market issuers.			

Note: For full documentation and discussion of these estimated costs and benefits see the detailed PRIA, available at *http://cciio.cms.gov* under ''Regulations and Guidance.''

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The Act generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent.

As discussed above, this proposed rule is necessary to implement standards for States related to reinsurance and risk adjustment, and for health insurance issuers related to reinsurance, risk corridors, and risk adjustment consistent with title I of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), referred to collectively as the Affordable Care Act. For purpose of the Regulatory Flexibility Analysis, we expect entities offering health insurance plans including fully insured health plan issuers, self-insured health plan issuers, TPAs and other organizations to be affected by this proposed rule. We believe that health insurers would be classified under the North American Industry Classification System (NAICS) Codes 524114 (Direct Health and Medical Insurance Carriers) According to SBA size standards, entities with average annual receipts of $7 million or less would be considered small entities for both of these NAICS codes. Health issuers could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be $10 million or less.

As discussed in the Web Portal interim final rule (75 FR 24481), HHS examined the health insurance industry in depth in the Regulatory Impact Analysis we prepared for the proposed rule on establishment of the Medicare Advantage program (69 FR 46866, August 3, 2004). In that analysis, we determined that there were few, if any, insurance firms underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) that fell below the size thresholds for ''small'' business established by the SBA (currently $7 million in annual receipts for health insurers, based on North American Industry Classification System Code 524114).[2]

Additionally, as discussed in the Medical Loss Ratio interim final rule (75 FR 74918), the Department used a data set created from 2009 National Association of Insurance Commissioners (NAIC) Health and Life Blank annual

financial statement data to develop an updated estimate of the number of small entities that offer comprehensive major medical coverage in the individual and group markets. For purposes of that analysis, the Department used total Accident and Health (A&H) earned premiums as a proxy for annual receipts. The Department estimated that there were 28 small entities with less than $7 million in A&H earned premiums offering individual or group comprehensive major medical coverage; however, this estimate may overstate the actual number of small health insurance issuers offering such coverage, since it does not include receipts from these companies' other lines of business.

As discussed earlier in this summary of the preliminary RIA, the Department is seeking comments on the potential impacts of the requirements in this proposed regulation on issuers' administrative costs. The Department is also seeking comments relating to potential impacts on small issuers.

This rule proposes standards for premium stabilization programs required of health plan issuers including the risk adjustment program as well as the transitional reinsurance and risk corridors programs. Because health plan issuers are the only entities impacted by this rule and as evidenced above, few if any insurance firms offering comprehensive health insurance policies fell below the size thresholds for ''small'' business established by the SBA. We request comment on whether the small entities affected by this rule have been fully identified. We also request comment and information on potential costs for these entities and on any alternatives that we should consider.

VI. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing proposed rule (and subsequent final rule) that includes any Federal mandate that may result in expenditures in any one year by a State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. Because States are not required to set up an Exchange or operate reinsurance and risk adjustment, the NPRM does not impose a mandate to incur costs above the $136 million UMRA threshold on State, local, or tribal governments.

VII. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct costs on State and local governments, pre-empts State law, or otherwise has Federalism implications. Because States have flexibility in designing their Exchange and Exchange-related programs, State decisions will ultimately influence both administrative expenses and overall premiums. States are not required to operate an Exchange, risk adjustment, or reinsurance. For States electing to operate an Exchange, risk adjustment and reinsurance, much of the initial costs to the creation of Exchanges and Exchange-related programs will be funded by Exchange Planning and Establishment Grants. After this time, Exchanges will be financially self-sustaining with revenue sources at the discretion of the State. Current State Exchanges charge user fees to issuers.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policy making discretion of the States, the Department has engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners, and consulting with State insurance officials on an individual basis.

Throughout the process of developing this NPRM, the Department has attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide access to Affordable Insurance Exchanges for consumers in every State. By doing so, it is the Department's view that we have complied with the requirements of Executive Order 13132.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this regulation, the Department certifies that CMS has complied with the requirements of Executive Order 13132 for the attached proposed regulation in a meaningful and timely manner.

VIII. Regulations Text

List of Subjects in 45 CFR Part 153

Administrative practice and procedure, Adverse selection, Consumer protection, Health care, Health insurance, Health records, Hospitals, Indians, Individuals with disabilities, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Reinsurance, Risk adjustment, Risk corridors, Risk mitigation, State and local governments.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR subtitle A, subchapter B, as set forth below:

SUBTITLE A—DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B—REQUIREMENTS RELATING TO HEALTH CARE ACCESS

Part 153 is added as follows:

PART 153—STANDARDS RELATED TO REINSURANCE, RISK CORRIDORS, AND RISK ADJUSTMENT UNDER THE AFFORDABLE CARE ACT

Subpart A—General Provisions

Sec.
153.10 Basis and scope.
153.20 Definitions.

Subpart B—State Notice of Insurance Benefits and Payment Parameters

153.100 Establishment of State insurance benefits and payment parameters.
153.110 Standards for the State Notice.

Subpart C—State Standards for the Transitional Reinsurance Program for the Individual Market

153.200 Definitions.
153.210 State establishment of a reinsurance program.
153.220 Collection of reinsurance contribution funds.
153.230 Calculation of reinsurance payments.
153.240 Disbursement of reinsurance payments.
153.250 Coordination with high-risk pools.

Subpart D—State Standards for the Risk Adjustment Program

153.300 Definitions.
153.310 Risk adjustment administration.
153.320 Federally-certified risk adjustment methodology.
153.330 State alternate risk adjustment methodology.
153.340 Data collection under risk adjustment.
153.350 Risk adjustment data validation requirements.

Subpart E—Health Insurance Issuer Standards Related to the Transitional Reinsurance Program

153.400 Reinsurance contribution funds.
153.410 Requests for reinsurance payment.

Subpart F—Health Insurance Issuer Standards Related to the Temporary Risk Corridors Program

153.500 Definitions.
153.510 Risk corridor establishment and payment methodology.

153.520 Risk corridors standards for QHP issuers.

Subpart G—Health Insurance Issuer Standards Related to the Risk Adjustment Program

153.600 Definitions.
153.610 Risk adjustment issuer requirements.
153.620 Compliance with risk adjustment standards.

Authority: Title I of the Affordable Care Act, Sections 1321, 1341–1343.

Subpart A—General Provisions

§ 153.10 Basis and scope.

(a) *Basis.* This part is based on the following sections of title I of the Affordable Care Act:

1321. State flexibility in operation and enforcement of Exchanges and related requirements.
1341. Transitional reinsurance program for individual market in each State.
1342. Establishment of risk corridors for plans in individual and small group markets.
1343. Risk adjustment.

(b) *Scope.* This part establishes standards for the establishment and operation of a transitional reinsurance program, temporary risk corridors, and a permanent risk adjustment program.

§ 153.20 Definitions.

The following definitions apply to this part, unless the context indicates otherwise:

Applicable reinsurance entity means a not-for-profit organization that carries out the reinsurance program established under this part.

Benefit year has the meaning given to the term in § 155.20.

Contributing entity means any health insurance issuer and, in the case of a self-insured group health plan, the third party administrator of the group health plan.

Enrollee has the meaning given to the term in § 155.20.

Exchange has the meaning given to the term in § 155.20.

Grandfathered health plan means coverage provided by a group health plan, or a health insurance issuer as provided in accordance with requirements under § 147.140.

Group health plan has the meaning given to the term in § 144.103.

Health insurance issuer or *issuer* has the meaning given to the term in § 144.103.

Health plan has the meaning given to the term in § 155.20.

Individual market means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

Reinsurance-eligible plan means, for the purpose of the reinsurance program, any health plan offered in the individual market with the exception of grandfathered plans.

Risk adjustment covered plan means, for the purpose of the risk adjustment program, any plan offered in the individual or small group market with the exception of grandfathered plans.

Small group market has the meaning given to the term in § 155.20.

State has the meaning given to the term in § 155.20.

Subpart B—State Notice of Insurance Benefits and Payment Parameters

§ 153.100 Establishment of State insurance benefits and payment parameters.

(a) *General requirement.* A State operating an Exchange, as well as a State establishing a reinsurance program, must issue an annual notice of benefits and payment parameters specific to that State if that State intends to modify any reinsurance or risk adjustment parameters from those specified in the forthcoming annual Federal notice of benefit and payment parameters.

(b) *State notice deadlines.* If a State elects to publish an annual notice of benefits and payment parameters, the State must issue the notice by early March of the year prior to the benefit year.

(c) *State failure to publish notice.* Any State operating an Exchange or establishing a reinsurance program that fails to publish a notice within the period specified in paragraph (b) of this section must adhere to the parameters, as specified in the forthcoming annual Federal notice of benefit and payment parameters.

§ 153.110 Standards for the State Notice.

(a) *Reinsurance content.* If a State operating an Exchange or establishing a reinsurance program intends to modify a Federal reinsurance payment parameter, the State notice must specify at least the following information:

(1) The data requirements and data collection frequency for health insurance issuers to receive reinsurance payment.

(2) The reinsurance attachment point, reinsurance cap, and coinsurance rate, as specified in § 153.230, if different from the corresponding parameters specified in the forthcoming annual Federal notice of benefit and payment parameters;

(3) If a State plans to use more than one applicable reinsurance entity, for each applicable reinsurance entity, the geographic boundaries for that entity and estimates of:

(i) The number of enrollees in group health plans, including the fully insured and self insured market;

(ii) The number of enrollees in the individual market;

(iii) The amount of reinsurance payments that will be made to issuers; and

(iv) The amount of all premiums in the geographic region that will be available for contributions for each reinsurance entity.

(b) *Risk adjustment content.* If a State operating an Exchange intends to modify a Federal risk adjustment parameter, the State notice must provide a detailed description of and rationale for any modifications, including:

(1) The methodology for determining average actuarial risk, including the establishment of risk pools and the Federally-certified risk adjustment model as specified in § 153.320; and

(2) The risk adjustment data validation methodology set forth in § 153.350.

Subpart C—State Standards for the Transitional Reinsurance Program for the Individual Market

§ 153.200 Definitions.

The following definitions apply to this subpart.

Attachment point means the threshold dollar amount of costs incurred by a health insurance issuer for payment of essential health benefits, as defined in section 1302(b) of the Affordable Care Act, provided for an enrolled individual, after which threshold, the costs for covered essential health benefits, as defined in section 1302(b) of the Affordable Care Act, are eligible for reinsurance payments.

Coinsurance rate means the rate at which the applicable reinsurance entity will reimburse the health insurance issuer for costs incurred to cover essential health benefits, as defined in section 1302(b) of the Affordable Care Act, after the attachment point and before the reinsurance cap.

Contribution rate means the rate, based on a percent of premium, used to determine the dollar amounts each health insurance issuer and third party administrator, on behalf of a self-insured group health plan, must contribute to a State reinsurance program.

Percent of premium means the percent of total revenue, based on earned premiums as described in § 158.130(a), in a fully insured market or the percent of total medical expenses in a self-insured market.

Reinsurance cap means the threshold dollar amount for costs incurred by a

health insurance issuer for payment of essential health benefits, as defined in section 1302(b) of the Affordable Care Act, provided for an enrolled individual, after which threshold, the costs for covered essential health benefits, as defined in section 1302(b) of the Affordable Care Act, are no longer eligible for reinsurance payments.

Third party administrator means the claims processing entity for a self-insured group health plan.

§ 153.210 State establishment of a reinsurance program.

(a) *General requirement.* Each State that elects to operate an Exchange must establish a reinsurance program for the years 2014 through 2016.

(1) The State must enter into a contract with an existing applicable reinsurance entity or establish an applicable reinsurance entity to carry out the provisions of this subpart.

(2) If a State establishes or contracts with more than one applicable reinsurance entity, the State must:

(i) Ensure that each applicable reinsurance entity operates in a distinct geographic area with no overlap of jurisdiction with any other applicable reinsurance entity; and

(ii) Publish the geographic boundaries for each applicable reinsurance entity in a State notice described in § 153.110.

(3) Under authority granted by the State, an applicable reinsurance entity may subcontract specific administrative functions required under this subpart and part 156 subpart G.

(4) States must review and approve subcontracting arrangements to ensure efficient and appropriate expenditures of administrative funds collected under this subpart.

(5) States must ensure that the contract or establishment of the applicable reinsurance entity is of sufficient duration to cover completion of all reinsurance-related activities for benefit years commencing in 2014 through 2016 and any activities required to be undertaken in subsequent periods.

(b) *Multi-State reinsurance arrangements.* Multiple States may contract with a single not-for-profit entity to serve as the applicable reinsurance entity for each State. In such cases, each contractual arrangement between the not-for-profit entity and the individual State will be treated as an individual State applicable reinsurance entity separate and distinct from all other applicable reinsurance entities operated by the not-for-profit entity.

(c) *Special State circumstances for establishing a reinsurance program.* For each State that does not elect to establish an Exchange, the State may determine to operate its own reinsurance program and must carry out all of the provisions in this subpart.

(d) *Non-electing States.* For each State that does not elect to establish an Exchange and does not determine to operate its own reinsurance program, HHS will carry out all of the provisions of this subpart on behalf of the State and establish the reinsurance program to perform all the reinsurance functions for that State.

(e) *Oversight.* Each State that establishes an Exchange or operates a reinsurance program must ensure that each applicable reinsurance entity complies with all provisions of this subpart and subpart E throughout the duration of its contract or establishment.

§ 153.220 Collection of reinsurance contribution funds.

(a) *General requirement.* The State must ensure that the applicable reinsurance entity collects contributions to fund the following:

(1) Reinsurance contributions that will total, on a national basis, $10 billion in 2014, $6 billion in 2015, and $4 billion in 2016.

(2) U.S. Treasury contributions that will total, on a national basis, $2 billion in 2014, $2 billion in 2015, and $1 billion in 2016.

(b) *Contribution rate.* The State must adhere to a national contribution rate set by HHS for the amounts listed in paragraph (a)(1) and (a)(2) of this section.

(1) HHS will set the contribution rate as a percent of premium through a forthcoming annual Federal notice of benefit and payment parameters.

(2) At a minimum, the State must ensure that all applicable reinsurance entities operating in a State collect from all contributing entities the amount set forth by the national rate. The contributions allocated for—

(i) Reinsurance payments must be used for reinsurance payments.

(ii) Payments to the U.S. Treasury must be paid to the U.S. Treasury.

(3) An applicable reinsurance entity may collect more than the amounts collected from the set national rate to provide—

(i) Additional funding for reinsurance payments if the State believes the amount is not sufficient to fund required reinsurance payments; and

(ii) Funding for administrative expenses of the applicable reinsurance entity.

§ 153.230 Calculation of reinsurance payments.

(a) *General requirement.* A health insurance issuer of a non-grandfathered individual market plan becomes eligible for reinsurance payments when its expenses for items and services within the essential health benefits, as defined in section 1302(b) of the Affordable Care Act, of an individual enrollee exceed an attachment point.

(b) *Reinsurance payment.* States may use the payment formula and values for the attachment point, reinsurance cap, and coinsurance rate for each year commencing in 2014 and ending in 2016, established in the forthcoming annual Federal notice of benefit and payment parameters.

(1) States must ensure that the reinsurance payment represents the product of the coinsurance rate times all health insurance issuer costs for an individual's essential health benefits, as defined in section 1302(b) of the Affordable Care Act, which the health insurance issuer incurs between the attachment point and the reinsurance cap.

(2) The State, or the applicable reinsurance entity on behalf of the State, must remit the amounts in paragraph § 153.220(a)(2) of this section to the general fund of the U.S. Treasury at a frequency to be determined by HHS.

(c) *State modification of reinsurance payment formula.* States may modify the reinsurance payment formula to values determined appropriate by the State.

(1) States may use one or all of the following methods:

(i) Increasing or decreasing the attachment point;

(ii) Increasing, decreasing, or eliminating the reinsurance cap; and

(iii) Increasing or decreasing the coinsurance rate.

(2) States must publish any modification to the reinsurance payment formula and parameters in a State notice as described in § 153.110.

(3) States that develop a State formula for reinsurance payments must ensure that contributions toward reinsurance are sufficient to cover:

(i) All payments that the applicable reinsurance entity is obligated to make under that State formula for the given calendar year for the reinsurance program;

(ii) All contributions to the U.S. Treasury described in § 153.220(a)(2).

§ 153.240 Disbursement of reinsurance payments.

(a) *Data collection.* The State must ensure that the applicable reinsurance entity collects from health insurance issuers of reinsurance-eligible plans data required to calculate payments described in § 153.230, according to the data requirements and data collection

frequency specified by the State in the notice described in § 153.110 or in the forthcoming annual Federal notice of benefit and payment parameters.

(b) *Reinsurance entity payments.* The State must ensure that each applicable reinsurance entity make payments to health insurance issuers that do not exceed contributions.

(1) Payments must be made to health insurance issuers of reinsurance-eligible plans based on the applicable payment notice identified in § 153.230(b) or the payment parameters set pursuant to § 153.230(c).

(2) Payments may be reduced on a pro rata basis to match the amount of contributions received by the State in a given reinsurance year. Any pro rata reductions that the State determines are necessary must be fair and equitable for all health insurance issuers in the individual market.

(3) The State must ensure that an applicable reinsurance entity makes payment as specified in § 153.410(b) to the health insurance issuer of a reinsurance-eligible plan after receiving a valid claim for payment from that health insurance issuer.

(c) *Maintenance of Records.* The State must maintain books, records, documents, and other evidence of accounting procedures and practices of the reinsurance program for each benefit year for at least 10 years.

§ 153.250 Coordination with high-risk pools.

(a) *General requirement.* The State shall eliminate or modify any State high risk pool to the extent necessary to carry out the reinsurance program established under this subpart.

(b) *Coordination with high-risk pools.* The State may coordinate the State high risk pool with the reinsurance program to the extent it conforms to the provisions of this subpart.

Subpart D—State Standards for the Risk Adjustment Program

§ 153.300 Definitions.

The following definitions apply to this subpart:

Alternate risk adjustment methodology means a risk adjustment methodology proposed by a State for use instead of existing Federally-certified risk adjustment models, but not yet certified by HHS.

Federally-certified risk adjustment methodology means a risk-adjustment methodology that has been either developed and promulgated by HHS or has been certified by HHS.

Risk adjustment methodology means the specific procedures used to determine average actuarial risk.

Risk adjustment model means an actuarial tool used to predict health plan costs based on the relative actuarial risk of enrollees in risk adjustment covered plans.

Risk pool means the population across which risk is distributed in risk adjustment.

§ 153.310 Risk adjustment administration.

(a) *State eligibility to establish a risk adjustment program.* (1) A State that elects to operate an Exchange is eligible to establish a risk adjustment program.

(2) Any State that does not elect an Exchange, or that HHS has not approved to operate an Exchange, will forgo implementation of all State functions in this subpart and HHS will carry out all of the provisions of this subpart on behalf of the State.

(3) Any State that elects to establish an Exchange but does not elect to administer risk adjustment will forgo implementation of all State functions in this subpart and HHS will carry out all of the provisions of this subpart on behalf of the State.

(b) *Entities eligible to carry out risk adjustment activities.* A State may elect to have an entity other than the Exchange perform the risk adjustment functions of this subpart provided that the entity selected meets the requirements proposed in § 155.110 of the notice of proposed rulemaking entitled, ''Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans,'' published in this issue of the **Federal Register.**

(c) *Timeframes.* A State, or HHS on behalf of the State, must commence calculating payment and charges with the 2014 benefit year.

§ 153.320 Federally-certified risk adjustment methodology.

(a) *General requirement.* Any risk adjustment methodology used by a State, or HHS on behalf of the State, must be established as a Federally-certified risk adjustment methodology. A risk adjustment methodology may become Federally-certified by one of the following processes:

(1) A risk adjustment methodology developed by HHS, with its use authorized and published in a forthcoming annual Federal notice of benefits and payment parameters; or

(2) An alternative risk adjustment methodology submitted by a State in accordance with § 153.330, and reviewed and certified by HHS. After HHS approves a State alternative risk adjustment methodology, that methodology is considered a Federally-certified risk adjustment methodology.

(b) *Publication of methodology in notices.* A State must use one of the Federally-certified risk adjustment methodologies that will be published by HHS in a forthcoming annual Federal notice of benefits and payment parameters or that has been published by the State in the annual State notice described in § 153.110(b). Each methodology will include:

(1) A complete description of the risk adjustment model, including—

(i) Factors to be employed in the model, including but not limited to demographic factors, diagnostic factors, and utilization factors, if any;

(ii) The qualifying criteria for establishing that an individual is eligible for a specific factor;

(iii) Weights assigned to each factor; and

(iv) The schedule for collection of risk adjustment data and determination of factors; and

(2) Any adjustments made to the risk adjustment model weights to determine average actuarial risk.

(c) *Use of methodology for States that do not elect an Exchange.* HHS will specify in the forthcoming annual Federal notice of benefits and payment parameters the Federally-certified risk adjustment methodology that will apply in States that do not elect to operate an Exchange.

§ 153.330 State alternate risk adjustment methodology.

(a) *State request for alternate methodology certification.*

(1) The State request to HHS for the certification of an alternative risk adjustment model must include:

(i) A description of specific risk pools to which the methodology will be applied;

(ii) A complete description of the risk adjustment model, including—

(A) Factors to be employed in the methodology, including but not limited to demographic factors, diagnostic factors, and utilization factors, if any;

(B) The qualifying criteria for establishing that an individual is eligible for a specific factor;

(C) Weights assigned to each factor;

(D) The schedule for collection of risk adjustment data and the method of data collection;

(E) Calibration methodology and frequency of calibration; and

(F) Statistical performance metrics, as specified by HHS; and

(iii) Any adjustments made to the base risk adjustment model weights to determine average actuarial risk.

(2) The request must include the extent to which the methodology:

(i) Accurately explains the variation in the expenses of a given population;

(ii) Links risk factors to daily clinical practice and are clinically meaningful to providers;

(iii) Encourages favorable behavior among providers and health plans and discourages unfavorable behavior;

(iv) Uses data that is complete, high in quality and available in a timely fashion;

(v) Is easy for stakeholders to understand and implement;

(vi) Provides stable risk scores over time and across plans; and

(vii) Minimizes administrative costs.

(b) *State renewal of alternate methodology.* The State may not implement a recalibrated risk adjustment model or otherwise altered methodology without first obtaining HHS certification.

(1) Recalibration of the risk adjustment model must be performed at least as frequently as described in paragraph (a)(1)(ii)(E);

(2) Request must include any changes to the parameters described in paragraph (a)(1).

§ 153.340 Data collection under risk adjustment.

(a) *Data collection requirements.* The State, or HHS on behalf of the State, must collect risk-related data to determine individual risk scores that form the basis for risk adjustment.

(b) *Minimum standards.* The State, or HHS on behalf of the State, may vary the amount and type of data collected provided that the State, or HHS on behalf of the State, uses the following standards for risk adjustment data collection:

(1) The NCPDP claims transaction or the HIPAA standard ASC X12N 837 Health Care Claim transaction for all claims and encounter data;

(2) The HIPAA standard ASC X12N 834 Benefit Enrollment and Maintenance transaction for all demographic and enrollment data; and

(3) To ensure adequate data privacy standards, the State, or any official, employee, agent or representative of the State must use individually identifiable information only as specifically required or permitted by this part and must not disclose individually identifiable information except as provided in paragraph (d) of this section.

(i) The State should interpret this provision as separate from the authority of other applicable laws for disclosing individual identifiable information under paragraph (d) of this section.

(ii) The State must implement security standards that provide administrative, physical, and technical safeguards for the individually identifiable information consistent with the security standards described at 45 CFR 164.308, 164.310, and 164.312.

(iii) The State must establish privacy standards that set forth approved uses and disclosures of individually identifiable information.

(c) *Exception for States with all payer claims databases.* Any State with an all payer claims database that is operational on or before January 1, 2013 may request an exception from the data collection minimum standards described in paragraph (b) of this section by submitting:

(1) Technical specifications for the all payer claims database including data formats;

(2) Proposed system modifications to support risk adjustment activities;

(3) Proposed system modifications to meet requirements set forth in paragraph (d) of this section and other Exchange-related activities.

(d) *Uses of risk adjustment data.* The State, or HHS on behalf of the State, must make relevant claims and encounter data collected under risk adjustment available to support claims-related activities as follows:

(1) Provide HHS with de-identified claims and encounter data for use in recalibrating Federally-certified risk adjustment models;

(2) Provide HHS with summarized claims cost for use in verifying risk corridor submissions; and

(3) Provide the reinsurance entity with summarized claims and encounter data from reinsurance-eligible plans for payment verification purposes and individual-level from reinsurance-eligible plans for audit purposes.

§ 153.350 Risk adjustment data validation standards.

(a) *General requirement.* The State, or HHS on behalf of the State, must validate a statistically valid sample of risk adjustment data from each issuer that offers at least one risk adjustment covered plan in that State.

(b) *Use of data validation to adjust risk.* The State, or HHS on behalf of the State, may adjust the average actuarial risk calculated in § 153.310 for all risk adjustment covered plans offered by an issuer based on the risk score error determined in the data validation conducted pursuant to paragraph (a) of this section.

(c) *Adjustment to charges and payments.* The State may adjust charges and payments to all risk adjustment covered plan issuers based on the adjustments calculated in paragraph (b) of this section.

(d) *Appeals.* The State must provide an administrative process to appeal data validation findings.

Subpart E—Health Insurance Issuer Standards Related to the Transitional Reinsurance Program

§ 153.400 Reinsurance contribution funds.

(a) *General requirement.* Each contributing entity must make payments of contributions, in a frequency and manner determined by the State or HHS, to the applicable reinsurance entity for each State in which the contributing entity issues health insurance for the contributions specified pursuant to § 153.220(b).

(b) *Multiple reinsurance entities.* If the State establishes or contracts with more than one reinsurance entity, the contributing entity must make payments to each applicable reinsurance entity that covers each geographic area in which the contributing entity issues health insurance.

(c) *Data requirements.* Each contributing entity must submit to each applicable reinsurance entity data required to substantiate the contribution amounts for the contributing entity.

(1) Each contributing entity in the individual and fully insured market must submit enrollment and premium data.

(2) Each contributing entity in the self-insured market must submit data on covered lives and total expenses.

§ 153.410 Requests for reinsurance payment.

(a) *General requirement.* A reinsurance-eligible plan issuer may make a request for payment when an enrollee of that reinsurance-eligible plan has met the criteria for reinsurance payment.

(b) *Manner of request.* Reinsurance-eligible plan issuers must make requests for payment in a manner that will be specified by the State as described in § 153.110 or in the forthcoming annual Federal notice of benefit and payment parameters.

Subpart F—Health Insurance Issuer Standards Related to the Temporary Risk Corridors Program

§ 153.500 Definitions.

Allowable administrative costs means the total non-medical costs as defined in § 158.160(b), including costs for the administration and operation incurred by the plan as set forth in § 158.160(b)(2).

Allowable costs means an amount equal to the total medical costs, which include clinical costs, excluding allowable administrative costs, paid by the QHP issuer in providing benefits covered by the QHP.

Charge means the flow of funds from QHP issuers to HHS.

Direct and indirect remuneration means prescription drug price concessions or similar benefits from manufacturers, pharmacies or similar entities obtained by a QHP issuer or an intermediary contracting organization with which a QHP issuer has contracted. Such concessions include but are not limited to: Discounts, charge backs, rebates, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, and grants. We further specify that the term applies regardless of whether the intermediary contracting organization retains all or a portion of the direct and indirect remuneration or passes the entire direct and indirect remuneration to the QHP issuer and regardless of the terms of the contract between the issuer and the intermediary contracting organization.

Payment means the flow of funds from HHS to QHP issuers.

Qualified Health Plan, or QHP, has the meaning given to the term proposed in the general definitions section of the Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, published in this issue of the **Federal Register.**

Risk corridor means any payment adjustment system based on the ratio of allowable costs of a plan to the plan's target amount.

Target amount means an amount equal to the total premiums incurred by a QHP, including any premium tax credit under any governmental program, reduced by the allowable administrative costs of the plan.

§ 153.510 Risk corridor establishment and payment methodology.

(a) *General requirement.* A QHP issuer must adhere to the requirements set by HHS in this subpart and in the forthcoming annual Federal notice of benefits and payment parameters for the establishment and administration of a program of risk corridors for calendar years 2014, 2015, and 2016.

(b) *HHS payments to health insurance issuers.* QHP issuers will receive payment from HHS in the following amounts under the following circumstances:

(1) When a QHP's allowable costs for any benefit year are more than 103 percent but not more than 108 percent of the target amount, HHS pays the QHP issuer an amount equal to 50 percent of the target amount in excess of 103 percent of the target amount; and

(2) When a QHP's allowable costs for any benefit year are more than 108 percent of the target amount, HHS pays to the QHP issuer an amount equal to the sum of 2.5 percent of the target amount plus 80 percent of allowable costs in excess of 108 percent of the target amount.

(c) *Health insurance issuers' remittance of charges.* QHP issuers must remit charges to HHS in the following amounts under the following circumstances:

(1) If a QHP's allowable costs for any benefit year are less than 97 percent but not less than 92 percent of the target amount, the QHP issuer must remit charges to HHS an amount equal to 50 percent of the difference between 97 percent of the target amount and the allowable costs; and

(2) When a QHP's allowable costs for any benefit year are less than 92 percent of the target amount, the QHP issuer must remit charges to HHS an amount equal to the sum of 2.5 percent of the target amount plus 80 percent of the difference between 92 percent of the target amount and the allowable costs.

§ 153.520 Risk corridor standards for QHP issuers.

(a) *Adjusted premium data.* QHP issuers must submit to HHS data on the premiums collected for each QHP that the issuer offers in a format specified by HHS. These premium amounts must be adjusted in the following manner:

(1) Increased by the amount of any payments received for—

(i) Risk adjustment, and

(ii) Reinsurance as described in § 153.230; and

(2) Reduced for any—

(i) Risk adjustment charges assessed,

(ii) Reinsurance contributions made as described in § 153.220, and

(iii) User fees paid.

(3) *Accounting for reinsurance payments.* QHP issuers must attribute reinsurance payments to risk corridors based on the date, to be determined by HHS, on which the valid reinsurance claim was submitted.

(b) *Allowable costs.* All QHP issuers offering QHP's must submit to HHS the allowable costs incurred for each QHP that the QHP issuer offers in a format to be specified in the forthcoming annual Federal notice of benefits and payment parameters.

(1) Allowable costs must be net of direct and indirect remuneration.

(2) Allowable costs must be reduced for any cost-sharing reductions payments received from HHS.

Subpart G—Health Insurance Issuer Standards Related to the Risk Adjustment Program

§ 153.600 Definitions.

Risk adjustment data means all data that are used in the application of a risk adjustment payment model.

§ 153.610 Risk adjustment issuer requirements.

(a) *Data submission.* All issuers that offer risk adjustment covered plans must submit all required risk adjustment data for those risk adjustment covered plans in the manner and timeframes established by the State, or by HHS on behalf of the State. This data may include but is not limited to:

(1) Claims and encounter data for items and services rendered;

(2) Enrollment and demographic information; and

(3) Prescription drug utilization data.

(b) *Issuer contracts.* Issuers that offer risk adjustment covered plans may include in their contracts with providers, suppliers, physicians, and other practitioners, provisions that require such contractor's submission of complete and accurate risk adjustment data in the manner and timeframes established by the State, or HHS on behalf of the State. These provisions may include financial penalties for failure to submit complete, timely, or accurate data.

(c) *Assessment of charges.* After charges and payments for all risk adjustment covered plans have been calculated, issuers that offer risk adjustment covered plans with a net balance of risk adjustment charges payable will be notified by the State, or by HHS on behalf of the State, for those net charges and must remit those risk adjustment charges to the State, or to HHS on behalf of the State.

§ 153.620 Compliance with risk adjustment standards.

(a) *Issuer support of data validation.* All issuers that offer risk adjustment covered plans must make available to HHS and the State any data requested to support validation of risk adjustment data reported under this subpart of this part.

(b) *Issuer records maintenance requirements.* All issuers that offer risk adjustment covered plans must retain any risk adjustment data reported under this subpart of this part for a period of at least ten years after the date of the report.

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

Dated: June 29, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 7, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–17609 Filed 7–11–11; 11:15 am]

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Part IV

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 730, 732, 734 et al.

Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML); Proposed Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 732, 734, 738, 740, 742, 743, 744, 746, 748, 756, 762, 770, 772 and 774

[Docket No. 110310188–1335–01]

RIN 0694–AF17

Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed Rule.

SUMMARY: President Obama directed the Administration in August 2009 to conduct a broad-based review of the U.S. export control system in order to identify additional ways to enhance national security. Secretary of Defense Gates described in April 2010 the initial results of that effort and why fundamental reform of the U.S. export control system is necessary to enhance national security. The Departments of Commerce and State described in two December 2010 Advanced Notice of Proposed Rulemakings the Administration's general plans for reviewing and revising the two primary lists of controlled items—the Commerce Control List (CCL) and the United States Munitions List (USML)—to accomplish this objective by, inter alia, making the lists more ''positive,'' ''aligned,'' and ''tiered.'' This rule proposes a new regulatory construct for the transfer of items on the USML that, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)(1)), the President determines no longer warrant control under the AECA and that would be controlled under the Export Administration Regulations (EAR) once the congressional notification requirements of section 38(f) and corresponding amendments to the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130) and its USML and the EAR and its CCL are completed. In addition to proposing a regulatory construct for transferring these items into the CCL, this rule proposes the transfer of an initial tranche of items from USML Category VII (Tanks and Military Vehicles) to the CCL. This rule also proposes amending the EAR to establish a process by which certain items moving from the USML to the CCL would be made eligible for License Exception Strategic Trade Authorization (STA), and proposes EAR amendments related to movement of USML items to the CCL, such as new definitions of relevant terms, including ''specially designed,'' ''end items,'' ''parts,'' and ''components.'' Finally, this notice proposes establishing a new holding Export Control Classification Number (ECCN) in which items that warrant a significant level of control, but are not otherwise classified on the CCL, may be temporarily placed.

DATES: Comments must be received by BIS no later than September 13, 2011.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (*http://www.regulations.gov*). The regulations.gov ID for this rule is: BIS–2011–0015. Comments may also be submitted via e-mail to *publiccomments@bis.doc.gov* or on paper to Regulatory Policy Division, Bureau of Industry and Security, Room 2099B, U.S. Department of Commerce, 14th St. and Pennsylvania Ave., NW., Washington, DC 20230. Please refer to RIN 0694–AF17 in all comments and in the subject line of e-mail comments.

FOR FURTHER INFORMATION CONTACT: Timothy Mooney, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–2440, Fax: (202) 482–3355, E-mail: *timothy.mooney@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

President Obama directed in August 2009 a broad-based interagency review of the U.S. export control system, including a review of the items on the USML to determine which, if any, continue to warrant ITAR controls. In April 2010, Secretary of Defense Gates described the initial results of this review and why fundamental reform of the export control system, including its lists of controlled items, is necessary to enhance national security. In December 2010, the Departments of Commerce and State described in two Advanced Notice of Proposed Rulemakings that they and the Defense Department were reviewing the State Department's USML and the Commerce Department's CCL and were considering how they could be revised to respond to the President's instructions and to satisfy Section 38(f) of the AECA, 22 U.S.C. 2778(f)(1), which states that the ''President shall periodically review the items on the [USML] to determine what items, if any, no longer warrant export controls under [section 2778].'' See ''Commerce Control List: Revising Descriptions of Items and Foreign Availability,'' 75 FR 76664 (Dec. 9, 2010); ''Revision to the United States Munitions List,'' 75 FR 76935 (Dec. 10, 2010). In addition, the Departments of Commerce and State requested public comments in the ANPRs on how the lists could be made more ''positive,'' ''aligned,'' and ''tiered.'' As described in the ANPRs, ''positive'' lists use objective criteria for describing controlled items rather than subjective, generic, or design-intent criteria. ''Aligned'' lists are those that are structured similarly. ''Tiered'' lists identify the significance of the controlled items. Such lists will better reflect contemporary national security and foreign policy objectives, reduce confusion about which items are controlled and how, and improve the ability of the U.S. Government to monitor and enforce controls on technology transfers with national security implications while helping to speed the provision of equipment to allies and partners who fight alongside United States armed forces in coalition operations.

Based on the results of the Defense Department-led review of the USML, the President has determined, pursuant to AECA section 38(f), that multiple types of items no longer warrant control on the USML and that their jurisdictional status should be changed so that they become subject to the EAR and its controls. Before the President may make such jurisdictional changes, however, he must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The notice must also ''describe the nature of any controls to be imposed on that item under any other provision of law.'' 22 U.S.C. 2778(f)(1). The purpose of this proposed rule is to describe how items that no longer warrant control on the USML will be controlled by the EAR and its CCL. The State Department will reference this proposed rule, and any applicable follow-on proposed amendments to particular CCL categories, when it submits its 38(f) notices to Congress prior to publishing the final rules that would amend the corresponding USML category or groups of subcategories.

As a result of the Defense Department-led review of the USML, the Department of State plans to propose amendments to the USML to transfer certain items to the CCL and to make each of its categories more positive, and aligned with the CCL. Thus, for example, instead of controlling on the USML all generic ''parts,'' ''components,'' ''accessories and attachments'' that are in any way ''specifically designed, modified, adapted, or configured'' for a defense article, regardless of military

significance, it will list the specific types of parts, components, accessories and attachments that warrant ITAR controls. All other generic parts, components, accessories and attachments—and the technology for their ''production,'' ''development,'' or ''use''—that are ''specially designed'' for an item formerly on the USML and not specifically identified on the USML will become subject to the jurisdiction of the EAR and identified on its CCL after the completion of the AECA section 38(f) process and subsequent corresponding amendments to the ITAR and its USML, and to the EAR and its CCL. Based on the same Defense Department-led review of the USML, the State Department also plans to change the jurisdictional status of militarily less significant end items, such as military recovery vehicles (i.e., tow trucks), when it revises the USML, so that they become subject to the EAR once the same process and amendments are completed.

Wassenaar Arrangement Munitions List (WAML) Items Currently on the CCL

The term ''dual-use'' is often informally used to describe the types of items subject to the EAR. *See* 15 CFR 730.3. A dual-use item has commercial applications and also has military applications or proliferation concerns. However, the items subject to the EAR encompass not only commercial items with military applications and proliferation concerns, but also items that are, by their form and fit, uniquely used in military end items. For example, items on the WAML (formerly known as the International Munitions List) that are now subject to the EAR are classified on the CCL under ECCNs ending in ''018.''

In addition to the ''018'' items, under ECCN 0A919, the EAR controls the reexports of certain foreign-made munitions items that incorporate ECCN 6A003.b.4.b cameras that are not otherwise subject to the ITAR. This notice proposes expanding 0A919 to also include foreign-made munitions items that incorporate more than 10% ''600 series'' controlled content. This rule also makes conforming changes elsewhere in the EAR to reflect this control.

Addressing a Larger Movement of Items From the USML to the CCL

This proposed rule would create a new regulatory structure to address the movement of items from the USML to the CCL resulting from the revision of the USML, but still warrant control by the U.S. Government. This movement is expected to be different in scale from previous migrations of USML items to the CCL, so it requires more substantial modifications of the CCL. This proposed rule would impose appropriate controls, consistent with Wassenaar Arrangement commitments, other multilateral export control regime commitments and national security, while minimizing the amount of restructuring to the CCL and the rest of the EAR. The movement of items from the USML to the CCL will require some special provisions to be added to the EAR, but these proposed changes are intended to be consistent with the existing EAR structure as much as possible.

Structure of the Discussion of the Proposed Changes in This Rule

This proposed rule includes a number of changes to the CCL and the EAR to address the movement of items from the USML to the CCL. This section provides an outline of the changes that are discussed in further detail under the heading ''Proposed Changes.'' The discussion of the changes are grouped into four broad headings, described under (1)–(4), below. Under each of the broad headings, this rule provides a discussion of the changes, which often touch on various parts or sections of the CCL and/or other parts of the EAR described under paragraphs at the (A), (i), (a) level below. This outline is not intended to be an exhaustive description of the provisions included in this rule, but is intended to help the public better understand the proposed changes. The public may wish to follow a similar structure when drafting comments on the proposed rule.

(1) ''600 Series''

(A) Addition of the ''600 series'' on the CCL.

(i) Structure of the new ''600 series.''

(ii) Reasons for control for the ''600 series.''

(iii) Addition of ''600 series'' items classified under .y to Supplement No. 2 to part 744.

(iv) Items formerly on the USML classified under the ''600 series.''

(v) Sample ''600 series'' entry demonstrating how ''parts,'' ''components,'' ''accessories and attachments'' would be described.

(vi) Current xY018 ECCNs that will be moved to the ''600 series'' ECCNs (while xY018 entries will continue for cross-reference purposes).

(vii) Conforming changes for other Wassenaar Arrangement Munitions List items on the CCL.

(B) Addition of license review policy for ''600 series'' items for National Security (NS) and Regional Stability (RS) reasons.

(C) License Exceptions for ''600 series'' items.

(i) Addition of general restrictions.

(ii) Revision to existing license exceptions to address ''600 series.''

(iii) License Exception STA eligibility requests for ''600 series'' end items.

(a) Proposed new paragraph (g) to § 740.20 (License Exception Strategic Trade Authorization (STA)) explains the process through which license applicants could request License Exception STA eligibility for ''600 series'' ''end items'' (as opposed to ''parts,'' ''components,'' ''accessories and attachments'').

(b) In § 748.8 (Unique application and submission requirements), this notice proposes adding paragraph (w) (License Exception STA eligibility for ''600 series'' end item requests) to alert license applicants that end items described in § 740.20(g) require unique application and submission requirements.

(c) Web site publication of approved License Exception STA eligibility request determinations under § 740.20(g).

(d) Supplement No. 4 to Part 774—Listing of License Exception STA Eligibility Determinations Pursuant to § 740.20(g) for ''600 Series'' ''End Items'' Eligible for License Exception STA under § 740.20(c)(1).

(iv) Other conforming changes to the EAR to address the proposed changes in license exceptions for ''600 series'' items.

(a) In § 732.4 (Steps regarding using License Exceptions), this proposed rule would revise Step 22 (Terms and Conditions of the License Exceptions) to add a cross reference to the Conventional Arms Reporting requirement in § 743.4 to alert exporters that, if they are exporting under License Exceptions LVS, TMP, RPL, STA, or GOV and their item is classified in the ''600 series,'' they should review § 743.4 of the EAR to determine the applicability of certain reporting requirements for conventional arms exports.

(b) Expansion of EAR's ''Know Your Customer'' Guidance and Red Flags to provide compliance guidance for License Exception STA and the ''600 series.''

(c) Addition of new EAR reporting requirements to support U.S. Government multilateral commitments for reporting of Wassenaar Arrangement Munitions List and formerly USML item exports to certain destinations.

(d) In § 762.2 (Records to be retained), to conform with the new recordkeeping requirements that would be added to the EAR under § 743.4 for Conventional

Arms Reporting and § 740.20(g), License Exception STA eligibility requests for ''600 series'' end items, this rule would add two new paragraphs to § 762.2 under (b)(47) and (b)(48) to indicate these are additional records that would need to be maintained.

(v) *De minimis* and ''600 series'' items.

(vi) Other conforming changes to the EAR to address the addition of the ''600 series.''

(a) In § 738.2 (Commerce Control List (CCL) structure) under paragraph (d)(1), this proposed rule would add a reference to the ''600 series'' to indicate that items in which the third character is a ''6'' are ''600 series'' items and controlled because they are items formerly on the USML or controlled by the WAML.

(b) Clarification of items of export.

(c) Revisions to Interpretation 8: Ground Vehicles.

(2) Creation of ECCN 0Y521 as an Equivalent to USML Category XXI

(i) Purpose of ECCN 0Y521.

(ii) Sample 0Y521 entry text.

(iii) License requirements and related policies for ECCNs 0Y521.

(iv) Publication of ECCN 0Y521 classifications.

(3) Changes to EAR Definitions To Address the Movement of Items From the USML to the CCL, Including Adopting a Single Definition of ''Specially Designed''

(i) Creation of New Definition of ''Specially Designed'' To Apply to (i) 600 Series ECCNs, (ii) Existing ECCNs Using Term, and (iii) Revised USML Categories Using Term.

(a) Purpose of adopting a single definition of ''specially designed.''

(b) ''Specially designed'' will play an important role in the ''600 series.''

(c) Clarifying the meaning of the term ''specially designed'' will improve the clarity of the control lists.

(d) Goals and limitations of effort to define ''specially designed.''

(e) Proposed definition of ''specially designed.''

(ii) Addition of ten definitions and revision to two existing definitions.

(4) Other Changes to Assist in the Structural Alignment of the USML and the CCL

(i) Revisions to CCL product group headings for product groups A and C.

(ii) Change of definition of materials (also described under (3)(ii) above).

Proposed Changes

This notice proposes making the following changes to enable control of items that move from the USML to the CCL:

(1) ''600 series''

(A) Addition of the ''600 Series'' on the CCL

In Supplement No. 1 to part 774 (the Commerce Control List), this rule proposes to add a new ''xY6zz'' control series to the CCL to control most items formerly on the USML moved to the CCL and to consolidate the thirteen existing WAML entries (i.e., those entries currently under ''xY018'') to this new ''600 series.'' This new control series would be added to each of the 10 CCL categories and would fall after the ''300 series'' and before the ''900 series'' on the CCL.

(i) Structure of the new ''600 Series''

Commerce would establish a new ECCN series within each CCL category that would be identified by a ''6'' at the third ECCN character (''xY*6*zz'') (the ''*600 series''*). This proposal would effectively create a ''Commerce Munitions List,'' comprising distinct ECCNs, that allows for identification, classification, and control of items transferred from the USML that, based on their technical or other characteristics, are not classified under an existing ECCN that is subject to controls for any reason other than Anti-Terrorism (AT) reasons. This would allow for a straightforward application of a licensing policy for items that move to the CCL from the USML. It would also be a necessary intermediate step to eventually creating a single dual-use and munitions control list, which was identified by the President as a goal during a taped presentation made on August 31, 2010 to the BIS Update Conference 2010. Commerce Secretary Locke and other senior members of BIS also spoke at the same BIS Update Conference, along with other senior members of the Departments of State and Defense, regarding the importance of achieving the goal of creating a single dual-use and munitions control list and the intermediate steps that would need to be taken to accomplish this goal of the Export Control Reform (ECR) initiative. The new ''600 series'' would be an extension of the existing 000, 100, 200, and 300 series hierarchy in the CCL for items controlled by the various multilateral export control regimes, such as the Australia Group (AG), as outlined in § 738.2.

BIS would retain the existing CCL Category (''x'') (i.e., 0 through 9) structure and the existing Group (''Y'') (i.e., A, B, C, D, and E) structure for the types of items that move to the CCL. If the type of item to be moved does not fit within the scope of any existing CCL Category's title or scope, then that type of item would be classified under a new ECCN in CCL Category 0. The fourth and fifth ECCN characters (''zz'') of each new ''600 series'' ECCN would track the WAML categories for the types of items at issue. WAML ML21 (''software'') and ML22 (''technology'') would, however, be rolled in to the existing D (''software'') and E (''technology'') CCL Category Groups.

The WAML numbering structure for the last two characters would be used rather than the USML numbering structure because the majority of items to be transferred would be subject to the WAML, although the ''600 series'' would not be limited to items on the WAML. Thus, the numbering scheme would be consistent with such controls. It would also clearly demonstrate that the U.S. continues to control all WAML items. In addition, multinational companies that must deal with both the USML system and the numbering system of most other allied countries (which tracks the WAML) would find compliance and tracking of controlled items somewhat easier.

(ii) Reasons for Control for the ''600 Series''

This rule proposes that items in the ''600 series'' ECCNs would generally be controlled for National Security Column 1 (''NS1'') reasons, which means that a license would be required to export or reexport them to all countries except Canada (excluding items also controlled for Missile Technology (MT), Proliferation of Chemical and Biological Weapons Column 1 (CB1), and Firearms Convention (FC) reasons) unless a license exception were available. MT-, CB1-, and FC-controlled end items that would move from the USML would continue to be controlled for, respectively, MT, CB, and FC reasons like all other MT-, CB1-, and FC-controlled items on the CCL. Multilateral regime-controlled items moved from the USML to the CCL would retain their regime control parameters and reasons for control, even if added to an existing ECCN or added to a new ''600 series'' ECCN. Items in the ''600 series'' would generally also be controlled for Regional Stability Column 1, Anti-Terrorism Column 1, and United Nations Embargo reasons for control.

Items that were on the CCL prior to the creation of the ''600 series'' and that move into the ''600 series'' after implementation of this rule will retain the reasons for control to which those items were subject prior to the creation of the ''600 series.'' For example, if an

item currently classified under an ECCN not in the ''600 series'' were controlled for NS2 or RS2 reasons, such controls would continue to apply after movement of that item to a ''600 series'' ECCN and NS1 or RS1 controls would not apply.

(iii) Addition of ''600 series'' items classified under .y to Supplement No. 2 to part 744. In Supplement No. 2 to part 744 (List of Items Subject to the Military End-Use License Requirement of § 744.21), this rule would add a new paragraph (10) to add items classified under paragraph .y of a ''600 series'' entry (e.g., 0A606.y) to the scope of items subject to the military end-use license requirement of § 744.21 (Restrictions on certain military end-uses in the People's Republic of China (PRC)). In addition, to conform to the proposed addition of paragraph (10), this rule would revise the introductory text of Supplement No. 2 to highlight the need to reference paragraph (10) for ''600 series'' items.

(iv) Items Captured Under the ''600 Series''

Each of the new ''600 series'' entries would capture WAML and formerly USML end items that are not identified in either (i) the revised USML or (ii) another existing ECCN controlled for more than AT-only reasons.

Generic ''parts,'' ''components,'' ''accessories'' and ''attachments'' moved from the USML would be controlled using a similar structure in each of the ''600 series'' ECCNs that would be added to the CCL. Former USML ''parts,'' ''components,'' ''accessories and attachments'' that are not: (i) identified in the revised, positive USML; (ii) specifically identified in a new 600 series entry; or (iii) described in another ECCN controlled for more than AT-only reasons would be controlled at the end of each new corresponding 600 series ECCN as ''parts,'' ''components,'' ''accessories and attachments'' 'specially designed' for (i) items controlled elsewhere in [that ECCN] or (ii) defense articles controlled in [the corresponding USML category].''

(v) Sample ''600 Series'' Entry for how ''Parts,'' ''Components,'' ''Accessories and Attachments'' Would be Described

The sample ''600 series'' ECCNs 0A606 and 0B606, included in this proposed rule, demonstrate how these types of parts, components, accessories, and attachments would be described. These items were compiled by the Department of Defense, working with the Departments of State and Commerce, and are based on a review solely of Category VII (Tanks and Military Vehicles) of the U.S. Munitions List.

''Items'' paragraphs 0A606.a through w. would cover the following specific types of items (*(e) through (w) would be reserved for future use in the ''600 series'' entry set out in the proposed amendments in this proposed rule.

Subparagraph ''x'' for the new ECCNs 0A606 and 0B606 is set out in the proposed amendments in this proposed rule.

Subparagraph ''y'' for the new ECCN 0A606 would cover specific types of ''parts,'' ''components,'' ''accessories and attachments'' that, even if ''specially designed'' for a defense article or ''600 series'' end item warrant no more than AT-only controls. Such ''parts,'' ''components,'' ''accessories and attachments'' would be indicated in new ECCN 0A606 as set out in the proposed amendments in this proposed rule.

The list of 0A606.y items will be identified in an AECA section 38(f) notification, along with the other ''600 series'' entries included in this proposed rule. Although this proposed rule is focused on creating new controls under the EAR for addressing the movement of items from the USML to the CCL, providing sample entries reflecting what items have already been identified as likely candidates to be moved from the USML to the CCL is intended to better inform the public.

Lastly, other positively identified ''parts,'' ''components,'' ''accessories and attachments'' that are directly related to end items listed in the end items section above would be listed next to the end item to which are they most directly related.

(vi) Current xY018 ECCNs Will be Moved in to the ''600 Series'' ECCNs

This rule proposes that all xY018 items be moved to the appropriate ''600 series'' ECCNs so that all Wassenaar Arrangement Munitions List and formerly USML items would be together in one series, which would create a *de facto* Commerce Munitions List inside the larger CCL, consistent with the overall structure of the CCL. This approach would enhance the ability of exporters to find relevant ECCNs and make it easier for the U.S. Government to apply a consistent licensing policy for former USML items. Thus, for example, the items in the ECCN 9A018.b (military vehicles and related parts that are now controlled in the ''aerospace and propulsion'' CCL category) would be moved to ECCN 0A606 where all other military vehicles and related parts would be controlled.

The old ''xY018'' entries would remain in the CCL for a time, but solely for cross-reference purposes. This rule proposes adding cross references in the ''related controls'' paragraph in the List of Items Controlled section of each ''xY018'' entry. These related control notes would refer to the new classification in the ''600 series.'' With respect to the new 0A606 entry being proposed, this notice proposes moving 0A018.a to 0A606.a and 9A018.b to 0A606.b.4.

(vii) Conforming Changes for xY018 Items on the CCL

The xY018 entries are also referred to in other provisions of the EAR, such as in the definition of ''military end use'' in § 744.21(f) of the EAR. There would be a transitional period, after the ''600 series'' entries are added to the CCL, in which certain xY018 entries would remain in the EAR while others would already have been consolidated into the respective ''600 series'' ECCNs. Because of this transitional status, the EAR provisions that refer to xY018 entries also would need to be revised to reference the ''600 series.'' Specifically, this rule proposes adding references to the ''600 series'' in the following five sections of the EAR that refer to xY018 entries: (i) § 742.6 (Regional stability) under paragraph (a)(4)(i); (ii) § 744.17 (Restrictions on certain exports and reexports of general purpose microprocessors for 'military end-uses' and to 'military end–users') under paragraph (d); (iii) § 744.21 (Restrictions on certain military end-uses in the People's Republic of China (PRC)) under paragraph (f); (iv) § 746.3 (Iraq) under paragraph (b)(2); and (v) § 772.1 (Definitions of terms and used in the Export Administration Regulations (EAR)) for the definition of ''military commodity.''

(B) Addition of License Review Policy for ''600 Series'' Items Controlled for National Security Reasons

This rule proposes in § 742.4 (National security) to revise paragraph (b)(1) by redesignating the existing text as paragraph (b)(1)(i) and adding paragraph (b)(1)(ii) to supplement the licensing policy in paragraph (b)(1)(i). Specifically, this new licensing policy in (b)(1)(ii) would state that in addition to the policy set forth in paragraph (b)(1)(i) of this section, items classified under the ''600 series'' would be subject to a general policy of denial when destined to a country subject to a United States arms embargo. BIS would publish the list of countries subject to a U.S. arms embargo in proposed § 740.2(a)(12), drawing from 22 CFR

126.1 and successive State Department **Federal Register** notices regarding arms embargoed destinations, which are compiled at *http://www.pmddtc.state.gov/embargoed_countries/index.html.* When this proposed rule is published as a final rule, paragraph (a)(12) would reflect the then-current list of arms embargoed destinations, and as the Department of State publishes amendments to § 126.1 and other arms embargo-related **Federal Register** notices, BIS would make corresponding changes to § 740.2(a)(12). For a determinative understanding at any given time of which countries are subject to a general policy of denial for U.S. arms embargo reasons, however, § 740.2(a)(12) would direct exporters, reexporters and transferors to review relevant the Department of State **Federal Register** notices, compiled at the Web site listed above.

This new license review policy would ensure that the U.S. Government can comply with its multilateral commitments to the United Nations (U.N.) by preventing ''600 series'' items from being exported to destinations subject to U.N. Security Council arms embargoes. In addition, this new license review policy would ensure that any country subject to a unilateral U.S. arms embargo would also be prevented from receiving ''600 series'' items.

(C) License Exceptions for ''600 Series'' Items

(i) Addition of General Restrictions

This rule proposes four changes to part 740 (License Exceptions) to address the movement of items from the USML to the CCL. Specifically, this rule proposes changes to §§ 740.2, 740.10, 740.11 and 740.20.

In § 740.2 (Restrictions on all License Exceptions), this rule proposes adding three new paragraphs, (a)(12), (a)(13) and (a)(14), to restrict the availability of license exceptions for ''600 series'' items for countries subject to a United States arms embargo. The restrictions on the use of license exceptions under paragraph (a)(12) are specific to countries subject to a United States arms embargo; the restrictions under paragraph (a)(13) are tied to the type of ''600 series'' item; and the restrictions under (a)(14) are specific to items designated as ECCN 0Y521, discussed below. In proposed paragraph (a)(12), the list of countries subject to a United States arms embargo would be listed for cross reference elsewhere in the EAR. To the extent items subject to the Missile Technology Control Regime (MTCR) are moved from the USML to the CCL, the same limitations and prohibitions on the use of license exceptions in connection with the export or reexport of MT-controlled items would apply to such items. This rule proposes no changes to the general restriction in paragraph (a)(5) on the use of license exceptions for items controlled for MT reasons, which means that no MT-controlled ''600 series'' ECCNs would be eligible for license exceptions under the EAR.

Under new paragraph (a)(12), this rule would make ''600 series'' items that were destined to a country subject to a United States arms embargo ineligible for license exceptions, unless authorized by License Exception GOV under § 740.11(b)(2)(ii). In paragraph (a)(12), the list of countries subject to such an embargo would be set forth. Currently, they are: Afghanistan, Belarus, Burma, China, Cuba, Cote d'Ivoire, Cyprus, Democratic Republic of Congo, Eritrea, Haiti, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Sierra Leone, Somalia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, Yemen, and Zimbabwe. This proposed paragraph (a)(12) would also include a note, as described above, directing exporter, reexporters and transferors to consult the Department of State Web site for the controlling list of countries subject to U.S. arms embargoes.

Under new paragraph (a)(13), this rule would also restrict the availability of license exceptions for ''600 series'' items to all countries other than those listed in new paragraph (a)(12). These restrictions would be added under three new paragraphs (a)(13)(i), (ii) and (iii).

Paragraph (a)(13)(i) would be specific to end items classified in ''xA6zz'' entries. This paragraph would exclude the use of license exceptions, except for License Exceptions LVS (§ 740.3); TMP (§ 740.9); RPL (§ 740.10); or GOV (under § 740.11(b)(2)(ii) or (b)(2)(iii)). License Exception GOV under (b)(2)(iii) would only be eligible for the governments identified in (b)(3)(iii), i.e., one of the STA–36 countries, which are: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. License Exception STA under § 740.20(c)(1) would be available, provided License Exception STA had been identified by BIS in writing as an eligible license exception for the particular end item classified in an ''xA6zz'' ECCN in response to a License Exception STA eligibility request in accordance with proposed § 740.20(g) of the EAR and the end item is destined, at the time of export, reexport or transfer (in-country) for ultimate end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies of a government in one of the STA–36 countries. The condition that the end item be destined, at the time of export, reexport or transfer (in-country) for ultimate end use by such agencies of a government of one of the STA–36 countries means that exports and reexports to non-governmental end users under STA in STA–36 countries would be permissible so long as the item at issue would ultimately be provided to a STA–36 government for end use by such a government. This eligibility under License Exception STA is proposed because the U.S. Government recognizes that there would be a significant volume of trade between and among private companies in the STA countries regarding ''600 series'' end items that would ultimately be for use by such agencies in governments in one of the STA–36 countries. Provided these end items would be exported, reexported or transferred (in-country) in accordance with the terms of License Exception STA, U.S. export control interests would be protected while at the same time transactions for the governments of STA–36 countries would be facilitated. BIS particularly welcomes comments on the types of government agencies that would be eligible to ultimately receive items through this license exception. If there are types of agencies that have been omitted from this list but should be included, commenters should provide BIS with this information, including specific examples of such agencies.

Paragraph (a)(13)(ii) would be specific to ''parts,'' ''components,'' ''accessories and attachments,'' in addition to any item classified in a ''xB6zz'' or ''xC6zz'' entry. This paragraph would exclude the use of license exceptions, except for License Exceptions LVS (§ 740.3); TMP (§ 740.9); RPL (§ 740.10); and GOV (under § 740.11(b)(2)(ii) or (b)(2)(iii)). License Exception GOV under (b)(2)(iii), which applies to items for official use within national territory by agencies of cooperating governments, would only be available for governments identified in (b)(3)(iii). License Exception STA (§ 740.20(c)(1)) would be available and would not need to be authorized through the § 740.20(g) process that is required for ''600 series'' end items

identified in (a)(13)(i), provided the ''parts,'' ''components,'' ''accessories and attachments,'' or any item classified in a ''XB6zz'' or ''XC6zz'' entry are destined, at the time of export, reexport or transfer (in-country) for ultimate end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies of a government in one of the countries listed in § 740.20(c)(1). The condition that the end item be destined, at the time of export, reexport or transfer (in-country) for ultimate end use by such agencies of a government of one of the License Exception STA–36 countries would mean that exports and reexports under STA to non-governmental end users in one of the STA–36 countries would be permissible so long as the item at issue would ultimately be provided to a government of one of the STA countries for end use by such agencies of a government.

Paragraph (a)(13)(iii) would be specific to ''software'' and ''technology'' classified in a ''xD6zz'' or ''xE6zz'' entry. This paragraph would exclude the use of license exceptions, except for License Exception GOV (§ 740.11(b)(2)(ii) or (b)(2)(iii)). License Exception GOV under (b)(2)(iii) would only be eligible for those governments identified in (b)(3)(iii)). License Exception TSU (§ 740.13(a) and (b)) would also be available. License Exception STA (§ 740.20(c)(1)) would be available, provided the ''software'' or ''technology'' is destined, at the time of export, reexport or transfer (in-country) for ultimate end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies of a government in one of the STA countries listed in § 740.20(c)(1). The condition that the end item be destined, at the time of export, reexport or transfer (in-country) for ultimate end use by such agencies of a government of one of these STA–36 countries means that exports and reexports to non-governmental end users under STA in one of the STA–36 countries would be permissible so long as the item at issue would ultimately be provided to such agencies of a government of one of the STA–36 countries for end use by such a government.

Under new paragraph (a)(14), this rule would restrict using license exceptions for items classified under ECCN 0Y521, described below, unless authorized by License Exception GOV under § 740.11(b)(2)(ii).

(ii) Revision to existing license exceptions to address ''600 series.''

In § 740.10 (Servicing and replacement of parts and equipment (RPL)), this rule proposes revising License Exception RPL to add ''600 series'' ''parts,'' ''components,'' ''accessories and attachments'' to the scope of this authorization. This rule also proposes imposing special restrictions on the use of License Exception RPL for the export or reexport of ''parts,'' ''components,'' ''accessories and attachments'' classified in ''600 series'' ECCNs. The proposed changes to License Exception RPL would also indicate that this license exception authorizes exports and reexports of certain items ''subject to the EAR'' to or for a defense article described in an export or reexport authorization issued under the authority of the AECA. The proposed revisions to License Exception RPL would also indicate that the authorization does not, however, authorize the export or reexport of ''parts,'' ''components,'' accessories,'' or ''attachments'' that are ''defense articles'' identified on the USML (22 CFR 120.6 and 121.1).

In § 740.11 (Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV)), this rule proposes revising License Exception GOV to add a new paragraph (b)(3)(iii) to identify which countries would be eligible to receive ''600 series'' items. This list of countries would be identical to those listed in License Exception STA under paragraph 740.20(c)(1). This rule proposes adding the STA–36 countries to (b)(3)(iii) as eligible to receive ''600 series'' items.

(iii) License Exception STA eligibility request for ''600 series'' ''end items.''

(a) In § 740.20 (License Exception Strategic Trade Authorization (STA)), this rule proposes adding a new paragraph (g) to create a new interagency process through which license applicants could request License Exception STA eligibility for ''600 series'' ''end items'' (as opposed to ''parts,'' ''components,'' ''accessories,'' or ''attachments'') classified in an ECCN ''xA6zz'' entry at the same time that they submit license applications covering such items. This new interagency review process would be a key component of the new control structure that is included in this proposed rule for addressing the movement of items from the USML to the CCL and ensuring that the governments of the STA–36 destinations would have access to these ''600 series'' ''end items'' once an interagency review and determination is made that such ''end items'' should be exportable under License Exception STA.

Proposed new paragraph (g)(1) would clarify when to submit a request for a License Exception STA eligibility requests for ''600 series'' end items. Exporters, reexporters, and transferors would request that specific ''end items'' classified in an ECCN ''xA6zz'' entry be identified as eligible for License Exception STA. Requests under paragraph (g) could only be submitted to BIS as part of a license application submitted for an export, reexport, or transfer (in-country) for an ''end item'' classified in an ECCN(s) ''xA6zz'' entry. Paragraph (g)(1) would specify that requests may not be submitted under paragraph (g) for items controlled for MT reasons, as such items would not be eligible for this procedure. Proposed paragraph (g)(2) would specify what information is required to be included in License Exception STA eligibility requests.

Proposed paragraph (g)(3) would provide the timeline for U.S. Government review of License Exception STA eligibility requests. At this time, BIS anticipates that license applications for ''600 series'' items and License Exception STA eligibility requests would be reviewed in accordance with the timelines set forth in Executive Order 12981 and § 750.4. With respect to license applications, the U.S. Government intends that after items move from the USML to the CCL, processing times for ''600 series'' items generally would not increase as compared to when such items were on the ITAR. Pursuant to EO 12981, license decisions under the EAR must be made within 39 calendar days, although the average processing time for BIS in 2011 has been 31 calendar days. For licenses processed by the Department of State, the average processing time has been generally around 17 calendar days. BIS welcomes public comments on an appropriate processing time for license applications involving these ''600 series'' items, in light of these timeframes. If commenters recommend a shorter review period, it would be useful if they also specify what processing times would be appropriate and identify any unique aspects of the ''600 series'' that may necessitate a need for a shorter review period, as well as the historical timeframes of the Department of State's processing of license applications involving such items. With respect to the timeframe for U.S. Government reviews of License Exception STA eligibility requests pursuant to § 740.20(g), BIS also welcomes public comments, particularly in light of the connection

between license applications involving ''600 series'' items and License Exception STA requests.

Proposed paragraph (g)(4) would describe the process for interagency review of License Exception STA eligibility requests, stating that interagency consensus would be required in the disposition of License Exception STA eligibility requests and identifying the criteria that the U.S. Government would use to review STA requests and make such determinations. Specifically, the Departments of Commerce, Defense and State would assess whether an item will provide a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies. If the item does not provide a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies, the Departments will determine that License Exception STA is available unless an overarching foreign policy rationale for restricting STA availability can be articulated. Such determinations would be made by the departments' representatives to the Advisory Committee on Export Policy (ACEP), or their designees. As consensus between the agencies is required for License Exception STA eligibility and such decisions are foreign policy determinations, this rule proposes in a new § 756.1(a)(4) that such decisions would be final agency action on License Exception STA eligibility requests and may not be appealed to the Under Secretary for Industry and Security under part 756 (Appeals).

Proposed paragraph (g)(5) would provide information on the disposition of License Exception STA eligibility requests under paragraph (g)(5)(i) for approvals and under (g)(5)(ii) for denials.

Paragraph (g)(5)(i) would indicate that if the request were approved, the applicant would receive written notification from BIS authorizing the use of License Exception STA for the specific ECCN(s) included in the License Exception STA eligibility request. At this point, anyone complying with the requirements of License Exception STA would be able to use the license exception for the approved end item. After issuing written notification to the application, BIS would post a redacted version of the BIS written response on the BIS Web site (typically within 30 calendar days from the date on which BIS sent the response to the applicant) informing the public of the additional License Exception STA eligibility for that ECCN. Within approximately three months after sending such a written response to the applicant (i.e., the date on the BIS response sent to the applicant), BIS would publish a final rule adding the License Exception STA eligibility to the EAR for that ECCN in the next quarterly update to Supplement No. 4 (i.e., in January, April, July, or October).

Paragraph (g)(5)(ii) would indicate that if the STA eligibility request were denied, the application would continue to be reviewed under the normal license review process described in part 750 under § 750.4(d)(2). The license application would be reviewed in accordance with the license review policies in part 742 (and parts 744 and/or 746, if applicable) of the EAR. Interagency review of license applications would be conducted without regard to the disposition of an STA eligibility request. Applicants whose requests to make a particular ''600 series'' end item eligible for STA are denied would not be precluded from resubmitting such a request in connection with a future export of the end item.

To confirm compliance with these provisions of License Exception STA, paragraph (g)(5)(iii) would be added to require that a copy of the BIS written response to the approved License Exception STA eligibility request be kept in accordance with the recordkeeping requirements in part 762 of the EAR in case any questions arise regarding whether that ECCN ''xA6zz'' end item was eligible to be exported, reexported or transferred (in-country) under License Exception STA.

Also in License Exception STA, but under paragraph (c)(1), this proposed rule would add a new Note to paragraph (c)(1) to indicate that ''parts,'' ''components,'' ''accessories and attachments'' are automatically eligible for License Exception STA under paragraph (c)(1), provided the export, reexport or transfer (in-country) meets the terms of the Note, which would conform with the general restriction on the use of license exceptions in § 740.2(a)(13)(ii) for ''600 series'' ''parts,'' ''components,'' and ''accessories and attachments.''

The note is set out in the proposed amendments in this proposed rule.

(b) In § 748.8 (Unique application and submission requirements), this rule proposes adding paragraph (w) (License Exception STA eligibility for ''600 series'' end items requests) to alert license applicants that end items described in § 740.20(g) require unique application and submission requirements. In Supplement No. 2 to part 748 (Unique Application and Submission Requirements), this notice proposes adding a corresponding paragraph (w) to identify the unique application and submission requirements for License Exception STA for ''600 series'' end items requests submitted under § 740.20(g).

Paragraph (w) in Supplement No. 2 to part 748 would indicate that in order to request a License Exception STA eligibility request pursuant to § 740.20(g), you must specify ''License Exception STA eligibility requests pursuant to 740.20(g)'' in Block 9 (Special Purpose) and mark ''export'' or ''reexport'' as applicable in Block 5 (Type of Application) BIS–748P ''Multipurpose Application'' form. If the application is for an ''in-country (transfer),'' the applicant would follow the instructions in Supplement No. 2 to part 748 under paragraph (v) to mark in Block 9 (Special Purpose) for in-country transfer and STA eligibility request under 740.20(g), along with marking ''reexport'' in Block 5.

Applicants would need to provide sufficient information for the U.S. Government to make such a determination. This would require the applicant to submit more than merely a description of the ''600 series'' end item. In particular, the applicant would need to provide supporting information for why it believes that the item does not, for example, provide a critical military or intelligence advantage to the United States and/or is otherwise available in countries that are not regime partners or close allies. The applicant would also need to provide information regarding whether and, if so, how the item is controlled by the export control laws and regulations of close allies and regime partners, if known. The applicant would further be advised that it may submit additional information that it believes is relevant to the U.S. Government in reviewing the License Exception STA eligibility request either under Block 24 (Additional Information) or as a separate support document attachment to the license application.

(c) Web site publication of approved License Exception STA eligibility request determinations under § 740.20(g).

This rule proposes a two-step process for informing the public of U.S. Government determinations made under § 740.20(g) (License Exception STA eligibility requests for ''600 series'' end items). The first part of the process would involve publishing these determinations on the BIS website. Specifically, BIS would create on its website a link to the lists of all ''600 series'' end items that the departments

have agreed would be eligible for License Exception STA (pursuant to § 740.20(g)). BIS would regularly update this list. The descriptions on the list would match (e.g., by model number or other equally specific descriptor) the descriptions of the items in the RWA notices for the License Exception STA eligibility requests. The description does not necessarily need to be limited to a particular manufacturer.

The second part of the process for informing the public of the determinations made under § 740.20(g) (License Exception STA eligibility requests for ''600 series'' end items) would involve adding the determinations to a new supplement (Supplement No. 4 to part 774) that would be added to the CCL. BIS proposes updating this new supplement on a quarterly basis, as needed, in January, April, July and October of each calendar year. With each quarterly update, BIS would publish in the CCL the specific and general types of ''600 series'' ''end items'' that may be exported under License Exception STA.

As noted above, an STA RWA sent to an applicant would contain sufficient detail so that the exporter could have a clear record of the Government's determination and would be able to cite the document as proof of the License Exception STA eligibility determination made pursuant to § 740.20(g).

(d) Supplement No. 4 to Part 774—Listing of License Exception STA Eligibility Determinations Pursuant to § 740.20(g) for ''600 Series'' ''End Items'' Eligible for License Exception STA under § 740.20(c)(1).

This proposed supplement would consist of two columns informing the public of munitions end items that have been determined to be eligible for License Exception STA under § 740.20(c)(1), pursuant to a License Exception STA eligibility determination under § 740.20(g). The two proposed columns on the table are set out in the proposed amendments in this proposed rule.

(iv) Other conforming changes to the EAR to address the proposed changes in license exceptions for the ''600 series.''

(a) In § 732.4 (Steps regarding using License Exceptions), this proposed rule would revise Step 22 (Terms and Conditions of the License Exceptions) to add a cross reference to the Conventional Arms Reporting requirement in § 743.4 to alert exporters, if they are exporting under License Exceptions LVS, TMP, RPL, STA, or GOV and their item is classified in the ''600 series,'' they should review § 743.4 of the EAR to determine the applicability of certain reporting requirements for conventional arms exports. This proposed rule would also revise the last step in § 732.4 (*i.e.*, Step 26 License applications) to add a paragraph describing the process of requesting License Exception STA eligibility for end items classified in an ECCN ''xA6zz'' entry on the CCL. The revisions to Step 26 would also indicate where exporters, reexporters and transferors could review the list of such end items that have already been approved for License Exception STA. Lastly, to alert exporters, reexporters and transferors who wish to use License Exception STA in such cases in which License Exception STA has been approved, a new Note would be added to remind them to review paragraph (a) and (b) to determine the steps needed in using license exceptions.

(b) Expansion of EAR's ''Know Your Customer'' Guidance and Red Flags to provide compliance guidance for License Exception STA and the ''600 series.''

This rule proposes adding two paragraphs to Supplement No. 3 to part 732 (BIS's Know Your Customer Guidance and Red Flags) to provide compliance guidance in the form of two additional red flags exporters, reexporters, and transferors for transactions that are subject to the EAR. One new red flag under new paragraph (b)(13) would refer to License Exception STA and the other would refer under proposed paragraph (b)(14) to the ''600 series.''

As these two additional red flags also have broader applicability, they would benefit all persons involved in transactions subject to the EAR in evaluating whether there may be a red flag that would require additional due diligence under the EAR to resolve the red flag prior to proceeding with the transaction. The purpose of this proposed guidance would be to assist persons involved in transactions subject to the EAR, including those authorized under License Exception STA under § 740.20 and/or involved in the export, reexport or transfer (in-country) of ''600 series'' items to better understand their responsibilities under the EAR and develop voluntary compliance programs.

(c) Addition of new EAR reporting requirements to support U.S. Government multilateral commitments for reporting on munitions exports from the U.S. to certain destinations.

To allow the U.S. Government to fulfill its multilateral commitments to the Wassenaar Arrangement and to the United Nations in regards to reporting on the export of certain items, in part 743 (Special reporting), this rule proposes adding a new § 743.4 (Conventional arms reporting) to create a new semi-annual reporting requirement (related to the Wassenaar Arrangement) for items that would be classified in the ''600 series'' and would be specifically identified in new paragraph (c)(1) as items that require reporting under the Wassenaar Arrangement. In this same section, this rule also proposes adding a new annual reporting requirement (related to the United Nations) for items that would be classified in the ''600 series'' and would be specifically identified in new paragraph (c)(2) as items that require reporting under the United Nations for conventional arms exports. These semi-annual and annual reports would be required for all exports of items identified in § 743.4 (which identifies certain items in the ''600 series'') except exports authorized by a BIS export license. The semi-annual and annual reporting requirements would not apply to reexports or transfers (in-country).

Lastly, as a conforming change, this notice proposes revising paragraph (a) of § 743.1 (Wassenaar Arrangement) to clarify that the reporting requirements in this existing section would be specific to items listed on the Wassenaar Arrangement's Dual-Use list. This proposed revision would alert the public that for reporting requirements for conventional arms listed on the WAML that are subject to the EAR (i.e., ''600 series'' ECCNs) to see § 743.4 of this part for Wassenaar Arrangement and UN reporting requirements.

(d) In § 762.2 (Records to be retained), to conform with the new recordkeeping requirements that would be added to the EAR under § 743.4 (Conventional arms reporting) and § 740.20(g) (License Exception STA eligibility requests for ''600 series'' end items), this rule would add two new paragraphs to § 762.2 under (b)(47) and (b)(48) to indicate these are additional records that would need to be maintained.

(v) *De minimis* and ''600 series'' items.

This rule proposes to add special restrictions for *de minimis* applicability for ''600 series'' items. The *de minimis* provisions in the EAR set forth the extent to which foreign-made items incorporating U.S. origin content are subject to the EAR. This rule proposes amending § 734.4 (*De minimis* U.S. content) by adding paragraph (b)(3) and making a conforming change to paragraph (c).

This rule proposes restricting the scope of *de minimis* for ''600 series'' ''parts,'' ''components,'' and other items subject to the EAR (i.e., those classified under xB6zz, xC6zz, xD6zz and xE6zz

entries). When foreign-made items that incorporate such controlled U.S. origin ''600 series'' items are to be exported from abroad or reexported to any country they are subject to the 10% *de minimis* rule for U.S. origin content rather than the 25% *de minimis* rule. New paragraph (b)(3) would thus limit *de minimis* eligibility for these ''600 series'' items. Specifically, U.S.-origin ''600 series'' items would be excluded from the 25% *de minimis* rule. The allowable dollar value under the 10% *de minimis* rule is not as permissive as the 25% *de minimis* rule, but even under the more restrictive 10% *de minimis* rule the U.S. Government believes this new proposed *de minimis* eligibility for items previously not eligible for *de minimis* treatment would advance the national security and industrial base objectives of the ECR initiative by reducing the incentive for foreign manufacturers to design out of their products U.S.-origin content.

This rule also would change paragraph (c) (10% *De minimis* Rule) to conform to the revision of paragraph (b).

(vi) Other conforming changes to the EAR to address the addition of the ''600 series.''

(a) In § 738.2 (Commerce Control List (CCL) structure) under paragraph (d)(1),

this proposed rule would add a reference to the ''600 series'' to indicate that items in which the third character is a ''6'' are ''600 series'' items and controlled because they are Wassenaar Arrangement Munitions List (WAML) and formerly USML items subject to the jurisdiction of the EAR. As described in the changes that would be made to part 772 in this rule, this rule also would add a definition of ''600 series'' to provide additional information to the public regarding this proposed control series. To explain the meaning of the last two numbers in ''600 series'' ECCNs, this rule would add a new paragraph (d)(1)(iv) that would indicate that the last two characters of each ''600 series'' ECCN will track the WAML categories for the types of items at issue. The Wassenaar Arrangement ML21 (''software'') and ML22 (''technology'') however, would be rolled into the existing D (''software'') and E (''technology'') CCL product groups.

(b) Clarification of items of export.

In § 730.3 (Dual use exports) this proposed rule would revise the heading from ''Dual use exports'' to ''Items of export.'' This change would be made to the heading and text of the section to more accurately reflect the scope of items subject to export controls under the EAR. Similar to the existing text of the section, the revised text would begin with noting the term ''dual use'' is often used to describe the types of items subject to the EAR. The revised section would indicate a dual use item has commercial applications and also has military or proliferation applications, but the more precise way of describing what is subject to the EAR is: Any item that is not exclusively controlled for export or reexport by another agency of the U.S. Government or excluded from the EAR pursuant to section 734.3(b) is an item that is subject to the EAR. Items subject to the EAR include most dual-use items, most commercial items and certain munitions items listed on the WAML classified under ECCNs in the ''600 series,'' ECCNs ending in ''018'' (but these ''018'' ECCNs are expected to be consolidated with the ''600 series'' in the near future as proposed in this rule) and ECCN 0A919). So although the term dual use in the past may have often been used informally to describe the scope of items subject to the EAR, this term does not accurately reflect the full scope of items that are subject to the EAR and should therefore no longer be used in describing the scope of items subject to the EAR without also referencing that the EAR also controls most commercial items and certain munitions items. The changes proposed for this section would make it clear the scope of items subject to the EAR extends beyond just dual use types of items.

(c) Revisions to Interpretation 8: Ground Vehicles.

In § 770.2 (Item Interpretations), this notice proposes revising ''Interpretation 8: Ground Vehicles.'' Interpretation 8 would be updated to reflect the revised, ''positive'' Category VII of the USML and the proposed addition of five new ECCN entries: 0A606, 0B606, 0C606, 0D606 and 0E606, along with the consolidation of 9A018.b into 0A606.b.4. The revised, ''positive'' USML Category VII and these ''600 series'' ECCNs would clarify which ground vehicles are subject to the ITAR and which are subject to the EAR. However, because some parts of Interpretation 8 still would serve a purpose in explaining the scope of these new ''600 series'' entries and the revised USML Category VII, the interpretation would be retained, but updated to reflect the updated control lists.

(2) *Creation of ECCN 0Y521 as an equivalent to USML Category XXI.*

(i) *Purpose of ECCN 0Y521.* As a mechanism for situations in which an item that warrants control is not controlled yet—e.g., as with an emerging technology—this rule proposes the addition of a new, miscellaneous ECCN to the CCL, similar to USML Category XXI (Miscellaneous Articles).

This new temporary holding classification would be included in Supplement No. 1 to part 774 in ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 (the 0Y521 ECCNs). The 0Y521 ECCNs would be designed as a temporary ''holding'' category for items not elsewhere classified on the CCL for which the U.S. Government is determining an appropriate control.

(ii) *Sample 0Y521 control text.* Each of the new five 0Y521 ECCNs would contain similar language, as set out in the proposed amendments to 0A521 in this proposed rule.

(iii) *License requirements and related policies for ECCNs 0Y521.* As set forth in § 742.6 (Regional stability) under proposed paragraph (a)(7), items classified under 0Y521 ECCNs would be identified by the Department of Commerce with the concurrence of the Departments of Defense and State. 0Y521 ECCN items would be identified as needed, giving the U.S. Government the opportunity to review the sensitivity of each potential ECCN 0Y521 item on a case-by-case basis and to make a positive determination regarding the sensitivity of each item.

ECCN 0Y521 items would be subject to a nearly worldwide license requirement (i.e., for every country except Canada) with a case-by-case license review policy. This would be accomplished by subjecting 0Y521 items to an RS1 license requirement. No license exceptions would be available for items classified under these ECCNs other than License Exception GOV if within the scope of § 740.11(b)(2)(ii) (Items for official use by personnel and agencies of the U.S. Government). A new § 740.2(a)(14) would be added to reflect this.

ECCN 0Y521 classifications would go into effect upon publication of a final rule in the **Federal Register**, amending the EAR, and would expire one year following the date of **Federal Register** publication. During that period, the U.S. Government would review the ECCN 0Y521 item to determine whether classification under a different ECCN or EAR99 designation might be appropriate. ECCN 0Y521 classification would be removed if one of the following events occurs: (1) The one-year 0Y521 classification period expires; or (2) the item is re-classified under a different ECCN or designated in writing by BIS as EAR99 and the ECCN 0Y521 entry is revised to remove the item. Alternatively, the item's ECCN 0Y521 classification may be re-extended for one or more one-year periods, provided a consensus determination was made by

the Departments of Commerce, State and Defense to seek multilateral controls for the ECCN 0Y521 item and the U.S. Government submitted a proposal to obtain multilateral controls over the item. The proposed rule specifies that such classification may not be re-extended for more than two one-year periods, i.e., that an item would, at the most, be classified under ECCN 0Y521 for three years.

Although described as a classification, the decision to identify an item as included in an 0Y521 ECCN would be a foreign policy determination, not a technical classification. Pursuant to § 756.1(a)(1), listing of items in Supplement No. 5 to part 774 would be an action that is excluded from the part 756 appeals process.

Finally, this rule proposes revising paragraph (b)(1) licensing policy to add paragraph (a)(7) to the licensing policy in paragraph (b)(1) that applies for exports and reexports described in paragraph (a)(1), (a)(2) or (a)(6). The license review policy would be used to evaluate on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would destabilize a region's military balance contrary to the foreign policy interests of the United States.

(iv) Publication of ECCN 0Y521 classifications.

This rule proposes adding Supplement No. 5 to Part 774—Items Classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521. This proposed supplement would consist of a table that would seek to identify the items as ''positively'' as possible; it may include identifying items by model number or a broader descriptor that would not necessarily be company specific. This table would specifically enumerate the items classified as 0Y521, along with providing information on when such items were classified under the relevant ECCN and when they would be designated as EAR99, be added to another ECCN on the CCL, or be included in a new ECCN on the CCL. Controls on items classified as 0Y521 would not go into effect until the ECCN 0Y521 determinations were published in the **Federal Register** with a description of the 0Y521 classified items added to Supplement No. 5 to part 774. BIS would publish rules revising Supplement No. 5 to part 774 as soon as possible once a new 0Y521 classification was made.

Column 1: Item descriptor. **Note:** The description must match by model number or a broader descriptor that does not necessarily need to be company specific;

Column 2: Date of initial or subsequent BIS classification.

Column 3: Date on which the item will be designated EAR99, unless reclassified in another ECCN or the 0Y521 classification is reissued.

(3) Changes to definitions to address the movement of items from the USML to the CCL, including adopting a single definition of ''specially designed.''

(i) Creation of New Definition of ''Specially Designed'' To Apply to (i) 600 Series ECCNs, (ii) Existing ECCNs Using Term, and (iii) Revised USML Categories Using Term.

(a) Purpose of adopting a single definition of ''specially designed.''

As described in the ANPRs, a core element of the positive USML review exercise is to avoid using design-intent based control parameters for generic items. The Administration has nonetheless determined that it cannot completely eliminate ''specially designed'' as a control parameter. The term is commonly used in the multilateral export control regimes' control lists upon which much of the CCL and USML are based. A basket category for controlling militarily less significant items ''specially designed'' for defense articles that move to the CCL is still necessary to achieve the larger national security objectives of the reform effort. Creating a positive list of the tens of thousands of such parts, components, accessories, and attachments that warrant some degree of control is not practicable as ''specially designed'' is used 264 times in the current CCL. Reviewing each such CCL reference, and clearing the proposed revisions through the multilateral regimes where required, is not realistically possible in the near term. Adopting the MTCR's definition of ''specially designed'' as the standard for the definition applicable to items controlled by the other multilateral export control regimes or that would move from the USML to the CCL is inappropriate. The U.S. Government has the national authority and discretion to define ''specially designed'' consistent with its regime commitments.

To accomplish the regulatory and definitional harmonization objectives described in the ANPRs, the definition of ''specially designed'' must be single, clear, and objective. This proposed rule contains, for public review and comment, a single definition the Administration believes satisfies all these objectives. BIS seeks public comments particularly on whether there would be any anticipated change in controls based on adoption of this definition, relative to the current situation where ''specially designed'' is only defined for MT-controlled items. Through this proposed definition, if an item is ''specially designed'' today, it would continue to be ''specially designed'' after adoption of this definition. If it is not ''specially designed'' today (meaning prior to adoption of the definition included in this rule), it also should not, except in rare cases, become ''specially designed'' after adoption of this definition in a final rule. As a result, BIS strongly encourages the public to apply the proposed definition to items, particularly ''end items,'' ''parts'' and ''components,'' it believes are or are not currently covered by ''specially designed'' and report to BIS any instances in which the proposed definition produces different results from the current definition. Such comments should describe the item and why the commentor believes that the item at issue is not now ''specially designed'' but would be as a result of the application of the new definition.

(b) ''Specially designed'' will play an important role in the ''600 series.''

As described above, generic ''parts,'' ''components,'' and ''accessories and attachments'' would be classified under the ''600 series'' ''x'' subparagraphs if they were ''specially designed'' for an end item in that ''600 series'' ECCN or a defense article in a corresponding USML category. ''End items'' not specifically enumerated would be classified in the ''600 series'' if they were ''specially designed'' for a particular function or purpose or to have a type of capability. The term would also be used by the Department of State in the revised USML categories.

Although a core element of the positive USML review exercise is to avoid using design-intent based control parameters for generic items, the U.S. Government cannot completely eliminate ''specially designed'' as a control standard for two primary reasons: The term is used in the multilateral regimes' control lists upon which most of the CCL is based, and a basket category for controlling militarily less significant items ''specially designed'' for defense articles that move to the CCL is still necessary.

Adopting the MTCR's definition of ''specially designed'' as the definition applicable to items controlled by the other regimes or items that would move from the USML to the CCL is inappropriate because of its limitation to items *exclusively* used for the controlled end item at issue. The MTCR definition of ''specially designed'' is: ''Specially designed. (MTCR context)—

Equipment, parts, components, or 'software' that, as a result of development', have unique properties that distinguish them for certain predetermined purposes. For example, a piece of equipment that is ''specially designed'' for use in a ''missile'' will only be considered so if it has no other function or use. Similarly, a piece of manufacturing equipment that is 'specially designed' to produce a certain type of component will only be considered such if it is not capable of producing any other type of component. The reliance of the MTCR definition on the concept of exclusively used limits the utility of this term as a single term for all of the items on the two control lists.

The single definition of ''specially designed'' proposed in this rule would not be limited to items with an exclusive use. In addition, the approach proposed in this rule would avoid confusion for exporters, jurors, prosecutors, and government officials responsible for export controls. Once incorporated into U.S. regulations, the U.S. Government will seek agreement in the Australia Group (AG), Nuclear Suppliers Group (NSG), and WA—which do not currently define the term—to use this definition in those regimes.

(c) Clarifying the meaning of the term ''specially designed'' will improve the clarity of the control lists.

In addition to playing an important role in the control structure proposed in this rule, the clarification of the meaning of ''specially designed'' as it is used on the two control lists would improve the clarity and ''positive'' nature of the two control lists and allow for drawing more clearly defined jurisdictional lines. Other regulatory initiatives are currently under way to address the meaning of other key terms used on the two control lists, such as ''technology'' and ''public domain,'' and to harmonize those other terms, but the harmonization of ''specially designed,'' given how closely tied the term is to the control structure that has been developed for addressing the movement of items from the USML to the CCL, needs to be addressed now. Specifically, this clarification would definitively answer any questions the public may have regarding the intended meaning of the term ''specially designed'' for all references to this term on the USML and the CCL and allow the term ''specially designed'' to play a key role in the ''600 series'' ECCNs that are proposed to be created.

(d) Goals and Limitations of Effort to Define ''Specially Designed.''

The U.S. Government has the national authority and discretion to define ''specially designed,'' so long as our definition is consistent with our regime commitments. A single, clear definition is necessary for most of the key goals of the export control reform effort to be realized. Specifically, this single definition must:

Preclude multiple or overlapping controls of similar items within and across the two control lists;

Be capable of being easily understood and applied by exporters, prosecutors, juries, and the U.S. Government—e.g., by using objective, knowable, and clear requirements that do not rely upon a need to investigate and divine the intentions of the original designer of a part or the predominant market applications for such items;

Be consistent with definitions used by the international export control regimes;

Not include any item specifically enumerated on either the USML or the CCL and, in order to avoid a definitional loop, do not use ''specially designed'' as a control criterion;

Be capable of excluding from control simple or multi-use parts such as springs, bolts, and rivets, and other types of items the U.S. Government determines do not warrant significant export controls;

Be applicable to both descriptions of end items that are ''specially designed'' to have particular characteristics *and* to parts and components that were ''specially designed'' for particular end items;

Be applicable to materials and software because they are ''specially designed'' to have a particular characteristic or for a particular type of end item;

Not result in an increase in the current control level to ''600 series'' control or other higher end controls of items (i.e., not moving items currently subject to a lower control status to a higher level control status), particularly current EAR99 items, that are now controlled at lower levels; *and*

Not, merely as a result of the definition, cause historically EAR controlled items to become ITAR controlled.

(e) Proposed Definition of ''Specially Designed.''

BIS, in working closely with the Departments of State and Defense on the issue, has determined that the following proposed definition of ''specially designed'' achieves the objectives noted above. A proposed definition of the term that would be added to the definitions section of the EAR and the ITAR (the proposed definition of ''specially designed'' for the ITAR would include ITAR specific references, ITAR and USML) is set out in the proposed amendments to 15 CFR 772.1 in this proposed rule.

(ii) Addition of ten definitions and revision to one existing definition.

In addition to revising definitions of the terms ''specially designed'' and ''material,'' which are discussed elsewhere in this proposed rule, in § 772.1 (Definitions of terms used in the Export Administration Regulations (EAR)), this rule also proposes adding ten definitions and revising one definition to aid in the structural alignment of the CCL with the USML and to add specificity regarding what items are classified under certain entries on the CCL. The ITAR and the USML describe with specificity what these defined ITAR terms, described below, are with respect to what defense articles subject to the ITAR are caught or not caught within the scope of specific entries on the USML. The EAR, in many places, does not draw a clear distinction between what constitutes a ''part'' versus a ''component,'' although in certain places the EAR does draw these types of distinctions. This proposed rule would add these definitions to the EAR. In a separate regulatory initiative, BIS plans to publish another proposed rule that will propose various conforming changes to the CCL and the overall EAR to reflect these new definitions.

Specifically, this rule proposes adding definitions for the following terms, which are used in the EAR but are currently undefined: ''600 series,'' ''accessories and attachments,'' ''component,'' ''end item,'' ''equipment,'' ''facilities,'' ''part,'' ''serial production'' and ''system.'' It further proposed revising the existing definition of ''military commodity,'' which is noted with an asterisk below.

The proposed definitions for these terms are set out in the proposed amendments in this proposed rule.

(4) *Other changes to assist in the structural alignment of the USML and the CCL.*

(i) Revisions to CCL product group headings for product group A.

To conform to the proposed changes described below under § 770.2, this proposed rule would update the product group heading for A in each Category of the CCL. This proposed change would help with the structural alignment of the CCL and USML by ensuring these terms and control lists' product group headings are used in a consistent way. Specifically, this proposed rule would change the product group A heading as set out in the proposed amendments.

(ii) Change to definition of ''Materials.''

This proposed rule would not change the heading except for adding quotation marks around the term to indicate it was defined, and would add a new definition in § 772.1 to define the term ''materials'' as it is used in this CCL Product Group C heading and in other parts of the EAR. Specifically, this proposed rule would add quotes around the product group C heading as set out in the proposed amendments.

In addition, this proposed rule would adopt the definition of ''Material'' in § 772.1 as set out in the proposed amendments.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2010, 75 FR 50681 (August 16, 2010), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under the following control numbers: 0694–0088, and 0694–0137. Specifically, BIS would be requesting a revision and extension of existing collection OMB 0694–0088 (Simplified Network Application Processing and Multipurpose Application Form), and 0694–0137 (License Exemptions and Exclusions).

This proposed rule will significantly reduce the overall burden associated with exporting certain items; however, the burden will shift among collections. This proposed rule will increase public burden in a collection of information approved by OMB under control number 0694–0088, which authorizes, among other things, export license applications. The creation of the ''600 series'' would result in increased license applications being submitted to BIS by exporters. In addition, certain license applications that include License Exception STA eligibility requests for ''600 series'' end items made pursuant to § 740.20(g) would also involve submitting additional information as part of the license application process. However, some of this increased burden, as noted above, will be mitigated by the availability of certain EAR license exceptions or portions of certain license exceptions for some of these items moved from the USML to the CCL. Total burden hours associated with the Paperwork Reduction Act and OMB control number 0694–0088 are expected to increase by about 5,067 hours (16,000 transactions @ 17 minutes each) if all items anticipated to be moved from the ITAR to the CCL are moved.

This rule also increases public burden in a collection of information approved by OMB under control number 0694–0137. In addition this notice proposes adding certain additional restrictions that will be placed on the use of license exceptions in § 740.2. These changes involve including additional restrictions, but also involve adding license exception eligibility that previously had not been available for these items when they were under the jurisdiction of the ITAR, so any burden should be offset by the benefits of moving such items from the USML to the CCL. BIS expects the requirements, if all items anticipated to be moved from the USML to the CCL are moved, are likely to increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions @ 1 hour and 10 minutes each) for the increase to license exception STA and 95 hours for license exception GOV (1,000 transactions @ 5.7 minutes per transaction).

This increased burden is significantly mitigated by the reductions in burden that would occur as a result of moving these items from the more restrictive licensing regime required by the AECA and implemented in the ITAR to the more flexible licensing regime of the EAR. The movement of these items from the USML to the CCL will significantly reduce the overall burden associated with exporting such items. Specifically, the movement of these items from the USML to the CCL will address and indeed largely solve simultaneously many of the most significant issues and goals of the ECR effort, such as (i) immediate relief from certain USML controls on non-military end items and militarily less significant parts and components; (ii) the collateral ITAR-specific consequences of such controls (e.g., the need for registration and Manufacturing Licensing Agreements (MLAs)/Technical Assistance Agreements (TAAs)); (iii) the process to accomplish the already agreed-upon transfer of such items to the CCL to allow for more flexible controls consistent with the criteria developed under the ECR initiative; and (iv) the collateral consequences of the ''see-through'' rule and the ''ITAR-free'' issues that create an incentive for foreign companies to buy foreign-made items that are not on the WAML instead of the U.S.-origin versions that are on the USML as a result of its broad controls over generic parts and components. For these reasons, BIS has determined that any increase in the burden associated with these collections is offset by the benefits of moving these items from the USML to the CCL. In addition, as noted above, looking at the overall burden on exporters under the U.S. export control system, the movement of these items from the USML to the CCL would result in a ''net reduction'' in the overall burden on exporters under the U.S. export control system.

Lastly, with respect to the PRA estimates included in this proposed rule, BIS has worked with the Department of State to estimate the volume of export related activity for these items that may be moved over, but given the ''positive'' review of the USML is still ongoing and there are other steps that are required prior to any items being moved from the USML to the CCL, such as the AECA section 38(f) notification process with Congress, the numbers used in this PRA estimate are a rough estimate that will be revised as subsequent rules begin the process of formally moving certain items from the USML to the CCL.

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

4. The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted in final form, would not have

a significant economic impact on a substantial number of small entities.

Number of Small Entities

Currently, BIS does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be impacted by this rule, it does acknowledge that this rule will impact some unknown number.

Economic Impact

Under the ECR initiative, a revised, ''positive'' USML is being created to protect and enhance U.S. national security interests by focusing munitions controls subject to the jurisdiction of the ITAR on the most sensitive items. As part of the ECR initiative to create a revised, ''positive'' USML, militarily less significant items will be moved from the USML to the CCL after the completion of the AECA section 38(f) process and subsequent corresponding amendments to the ITAR and its USML and to the EAR and its CCL.

BIS believes focusing U.S. export controls in this way will reduce the costs on small entities (and all other entities) subject to U.S. export controls, once this process of revising the two control lists and moving the militarily less significant items from the USML to CCL is completed in 2012, as currently projected. BIS believes that this rule would reduce the costs to small entities (and all other entities) because it would create a control structure under the EAR that would allow militarily less sensitive items to be moved from the USML, to the CCL and be subject to a more flexible licensing regime under the EAR.

BIS believes the creation of the control structure included in this proposed rule is a prerequisite before any items could be moved from the USML to the CCL (*i.e.,* before small entities and all other entities could benefit from the movement of items from the USML to the CCL). The purpose of this rule is to propose the new control structure and to explain to small entities (and all other entities) how items moved from the USML will be classified under the CCL and what other provisions will be added to the EAR to address the movement of items from the USML to the CCL. The control structure itself will not impact the regulated entities until items are moved from the USML to the CCL.

This rule will create new license requirements such as imposing a NS1 and RS1 worldwide license requirement, except for Canada, for the items moved from the USML to the CCL that would be classified in the new ''600 series.'' This rule will significantly reduce the costs on small entities (and all other entities) by allowing for certain *de minimis* eligibility for these items moved from the USML to the CCL, but certain restrictions on the use of *de minimis* and restrictions on the use of license exceptions would be added to the EAR which create limits on small entities (and all other entities). This rule would also create new reporting requirements related to the export of certain ''600 series'' items under new § 743.4. However, these new reporting requirements can be conceptualized as a shifting the reporting burdens as the burdens are largely the same in type and scope as those required under the USML. As a result, although the reporting requirement proposed in this rule is a new reporting requirement under the EAR, the burden placed on small entities (and all other entities) is not increased in terms of the overall burden placed on them under the U.S. export control system.

BIS believes the additional controls and requirements discussed above are required to protect U.S. national security and that the benefits of moving these items from the USML to the CCL far outweigh any additional costs associated with moving these militarily less sensitive items to the CCL both from a U.S. national security perspective and in terms of the costs placed on small entities (and all other entities). In addition, as much as possible, these additional controls would be added to the CCL in a manner that is consistent with the existing CCL and EAR control structure to minimize the costs associated with understanding and complying with these new controls.

In addition to the establishment of a control structure, this rule proposes to move a limited number of items from the USML to the CCL as a pilot. Because this rule proposes to move only a relatively small number of items from the USML to the CCL at this time, the economic impact of this rule will be minimal. These items would be moved from Category VII (Tanks and Military Vehicles) of the U.S. Munitions List to the following five ECCNs included in this proposed rule: 0A606, 0B606, 0C606, 0D606 and 0E606. Future transfers of items from the USML to the CCL will be conducted under separate rulemakings and BIS will conduct an analysis regarding each rule's economic impact.

The other changes included in this proposed rule, in particular the clarification of ''specially designed,'' will benefit small entities (and all other entities), once a larger number of items are moved from the USML to the CCL in subsequent rulemakings because of the improved clarity of the control lists and the improvements that will occur in drawing a bright line between the two control lists. The focusing of the two control lists, along with the clarification of key control lists terms such as ''specially designed''—a term small entities (and all other entities) have long requested be clarified under U.S. export controls—and the other changes included in this proposed rule to structurally align the two control lists are expected to reduce the costs on small entities (and all other entities) of complying with U.S. export controls.

Although BIS is not able to quantify the economic impact, it estimates that small entities (and all other entities) would benefit from the movement of these items from the USML to the CCL. BIS believes moving certain parts and components from the USML to the CCL in particular would reduce the costs on small entities (and all other entities), once such items are moved from the USML to the CCL in subsequent rulemakings. Specifically, BIS believes that moving these militarily less sensitive parts and components to the CCL will address and indeed largely solve simultaneously many of the most significant issues and goals of the ECR effort, such as (i) Immediate relief from USML control of non-military end items and militarily less significant parts and components; (ii) the collateral ITAR-specific consequences of such controls (e.g., the need for registration and MLAs/TAAs); (iii) the process to accomplish the already agreed-upon transfer of such items to the CCL to allow for more flexible controls consistent with the criteria developed under the ECR initiative; (iv) the collateral consequences of the ''see-through'' rule and the ''ITAR-free'' issues that create an incentive for foreign companies to buy foreign-made items that are not on the WAML instead of the U.S.-origin versions that are on the USML as a result of its broad controls over generic parts and components.

Conclusion

BIS is unable to determine whether there are a substantial number of small entities affected by this rule. However, the effect of this rule on all entities is not likely to be a significant economic impact because, as mentioned above, through this proposed rule is limited to creating the new control structure and moving only a small, first tranche of items from the USML to the CCL.

BIS believes, along with the other agencies participating in the ECR

initiative, that distinguishing between different levels of sensitivity to determine what items need to be maintained on the USML and what militarily less sensitive items should be transferred to the CCL to allow for more flexible licensing for the militarily less sensitive items will have significant benefits in improving the efficiency of the U.S. export control system by focusing the most restrictive controls on the most sensitive items, which will protect and enhance U.S. national security while also reducing the costs associated with complying with U.S. export controls, particularly for small and medium-sized entities. Specifically, moving these militarily less sensitive items to the EAR will protect and enhance U.S. national security by improving the interoperability of U.S. military forces with allied countries and reducing the incentive to design-out U.S.-origin items. Reducing the incentive to design out U.S.-origin ''600 series'' items, along with all of the other benefits that come along with moving these items to the more flexible licensing regime of the EAR will help protect the U.S. industrial base. This is essential to ensuring the U.S. armed forces are properly equipped.

For the reasons above, the Chief Counsel for Regulation certified that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 732

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

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research Science and technology.

15 CFR Parts 738 and 772

Exports.

15 CFR Parts 740, 748 and 770

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

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Parts 746 and 774

Exports, Reporting and recordkeeping requirements.

15 CFR Part 756

Administrative practice and procedure, Exports, Penalties.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

Accordingly, parts 730, 732, 734, 738, 740, 742, 743, 744, 746, 748, 756, 762, 770, 772 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are proposed to be amended as follows:

PART 730—[AMENDED]

1. The authority citation for 15 CFR part 730 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p.133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010); Notice of January 13, 2011, 76 FR 3009 January 18, 2011).

2. Section 730.3 is revised to read as follows:

§ 730.3 Items of export.

The term ''dual use'' is often used to describe the types of items subject to the EAR. A dual use item has commercial applications and also has military applications or proliferation concerns, but the more precise way of describing what is subject to the EAR is: any item that is not exclusively controlled for export or reexport by another agency of the U.S. Government or excluded from the EAR pursuant to section 734.3(b) is an item that is subject to the EAR. Items subject to the EAR encompass not only commercial items with military applications and proliferation concerns, but also certain items that, by their form and fit, are uniquely used in military end items. Items subject to the EAR include most dual-use items, most commercial items and certain munitions items listed on the Wassenaar Arrangment Munitions List (WAML) or formerly on the USML classified under ECCNs in the ''600 series,'' ECCNs ending in ''018'' (but these ''018'' ECCNs are expected to be consolidated with the ''600 series'' in the near future) and ECCN 0A919). So although the term dual use in the past may have often been used informally to describe the scope of items subject to the EAR, this term no longer accurately reflects the full scope of items that are subject to the EAR and should therefore no longer be used in describing the scope of items subject to the EAR without also referencing that the EAR also controls most commercial items and certain munitions items.

PART 732—[AMENDED]

3. The authority citation for 15 CFR part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

4. Section 732.4 is amended:

a. By adding one sentence to the end of paragraph (b)(3)(iv);

b. By revising paragraph (b)(7); and

c. By adding a Note to paragraph (b)(7)(ii), to read as follows:

§ 732.4 Steps Regarding Using License Exceptions.

* * * * *

(b) * * *

(3) * * *

(iv) * * * If you are exporting under License Exceptions LVS, TMP, RPL, STA, or GOV and your item is classified in the ''600 series,'' you should review § 743.4 of the EAR to determine the applicability of certain reporting requirements for conventional arms exports.

* * * * *

(7) *Step 26: License applications.*

(i) If you are going to file a license application with BIS, you should first review the requirements at part 748 of the EAR. Exporters, reexporters, and transferors should review the instructions concerning applications and required support documents prior to submitting an application for a license.

(ii) If you are going to file a license application with BIS for the export, reexport or in-country transfer for an ''end item'' classified in an ECCN ''xA6zz'' entry on the CCL, you may also request as part of the license application a License Exception STA eligibility request pursuant to the process in § 740.20(g) of the EAR. ''End items'' classified in an ECCN ''xA6zz'' entry on the CCL that have already been determined to be eligible for License Exception STA pursuant to § 740.20(g) are identified in Supplement No. 4 to part 774 of the EAR. See Supplement No. 2 to part 748 under paragraph (w) (License Exception STA eligibility requests) for instructions concerning applications and required support documents prior to submitting an application for a license which will include a License Exception STA eligibility requests.

Note to paragraph (b)(7)(ii): If you intend to use License Exception STA, return to paragraphs (a) and then (b) to review the Steps regarding the use of license exceptions.

5. Supplement No. 3 to part 732 is amended by adding paragraphs (b)13. and (b)14., to read as follows:

SUPPLEMENT NO. 3 TO PART 732—BIS'S ''KNOW YOUR CUSTOMER'' GUIDANCE AND RED FLAGS

* * * * *

(b) * * *

13. You receive an order for ''parts'' for an item in the ''600 series.'' The requested ''parts'' may be eligible for License Exception STA, another authorization, or may not require a destination-based license requirement for the country in question. However, the requested ''parts'' would be sufficient to service one hundred of the ''600 series'' items, but you ''know'' the country does not have those types of end items or only has two of those end items.

14. The customer indicates that a ''600 series'' item may be reexported to a country subject to an arms embargo (see § 740.2(a)(12)).

PART 734—[AMENDED]

6. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010).

7. Section 734.4 is amended:

a. By revising the heading and the introductory text of paragraph (b);

b. By adding paragraph (b)(3); and

c. By revising the introductory text of paragraph (c), to read as follows:

§ 734.4 De minimis U.S. content.

* * * * *

(b) *Special requirements for certain encryption items and ''600 series'' items subject to the EAR.* Foreign made items that incorporate U.S. origin encryption items that are listed in this paragraph are subject to the EAR unless they meet the *de minimis* level and destination requirements of paragraph (c) or (d) of this section and the requirements of this paragraph. For foreign made items that incorporate U.S.-origin ''600 series'' items, see paragraph (b)(3) of this section.

* * * * *

(3) Foreign made items incorporating U.S.-origin items classified under the ''600 series'' (i.e., ''xY6zz'') are excluded from the ''25% *De minimis* Rule'' in paragraph (d) of this section. See the ''10% *De minimis* Rule'' in paragraph (c) of this section for exports from abroad or reexports for foreign made items incorporating U.S.-origin items classified under the ''600 series'' ECCNs (i.e., ''xY6zz'').

* * * * *

(c) *10% De Minimis Rule.* Except as provided in paragraphs (a) and (b)(1)(iii) of this section and subject to the provisions of paragraphs (b)(1)(i), (b)(1)(ii), (b)(2) and (b)(3) of this section, the following reexports are not subject to the EAR when made to any country in the world. See Supplement No. 2 of this part for guidance on calculating values.

* * * * *

PART 738—[AMENDED]

8. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

9. Section 738.2 is amended:

a. In the introductory text of paragraph (b) by removing ''A—Equipment, Assemblies and Components'' and adding in its place, ''A—End Items, Equipment, Accessories and Attachments, Parts, Components, and Systems'';

b. In the introductory text of paragraph (d)(1) by adding paragraphs ''5:'' and ''6:'' after paragraph ''3:'' and before paragraph ''9:''; and

c. By adding paragraph (d)(1)(iv), to read as follows:

§ 738.2 Commerce Control List (CCL) structure.

* * * * *

(d) * * *

(1) * * *

5: Items warranting national security or foreign policy controls at the determination of the Department of Commerce.

6: ''600 series'' controls items because they are items on the Wassenaar Arrangement Munitions List (WAML) or formerly on the USML.

* * * * *

(iv) Last two characters in a ''600 series'' ECCN. The last two characters of each ''600 series'' ECCN track the Wassenaar Arrangement Munitions List (WAML) categories for the types of items at issue. The WAML ML21 (''software'') and ML22 (''technology'') are, however, included in D (''software'') and E (''technology'') CCL product groups.

* * * * *

PART 740—[AMENDED]

10. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

11. Section 740.2 is amended:

a. By adding paragraph (a)(12), a note to paragraph (a)(12), and paragraphs (a)(13) and (a)(14); and

b. By adding a note to paragraph (a), to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(12) Items classified under the ''600 series'' that are destined to a country subject to a United States arms embargo or a United Nations Security Council arms embargo (Afghanistan, Belarus, Burma, China, Cote d'Ivoire, Cuba, Cyprus, Democratic Republic of Congo, Eritrea, Haiti, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Sierra Leone, Somalia, Sudan, Sri Lanka, Syria, Venezuela, Vietnam, Yemen, and

Zimbabwe) may not be authorized under any license exception except by License Exception GOV under § 740.11(b)(2)(ii).

Note to paragraph (a)(12): Countries subject to U.S. arms embargoes are identified by the State Department through notices published in the **Federal Register**. The list of arms embargoed destinations in this paragraph is drawn from 22 CFR 126.1 and State Department **Federal Register** notices related to arms embargoes (compiled at *http://www.pmddtc.state.gov/embargoed_countries/index.html*) and will be amended when the State Department publishes subsequent notices. If there are any discrepancies between the list of countries in this paragraph and the countries identified by the State Department as subject to a U.S. arms embargo (in the **Federal Register**), the State Department's list of countries subject to U.S. arms embargoes shall be controlling.

(13) Items classified under the ''600 series'' are not eligible for any license exception, except as described in paragraph (a)(13)(i), (ii), or (iii) of this section. For MT-controlled items, including ''600 series'' ECCNs, see the restrictions on all license exceptions in paragraph (a)(5) of this section. Under the restriction in paragraph (a)(5), no such ''600 series'' ECCNs are eligible for license exceptions. You may not use a license exception to authorize a MT-controlled item in the ''600 series.''

(i) ''600 series'' ''end items'' may only be authorized by the following license exceptions:

(A) License Exception LVS (§ 740.3);

(B) License Exception TMP (§ 740.9);

(C) License Exception RPL (§ 740.10);

(D) License Exception GOV (§ 740.11(b)(2)(ii) or (b)(2)(iii)). License Exception GOV paragraph (b)(2)(iii) is only available for countries listed in § 740.20(c)(1); or

(E) License Exception STA under § 740.20(c)(1), provided License Exception STA has been identified by BIS in writing or published as an eligible license exception for the particular ''600 series'' end item in response to a License Exception STA eligibility request in accordance with § 740.20(g) of the EAR and the ultimate end use for the end item is by a government in one of the countries listed in § 740.20(c)(1). Exports and reexports to non-governmental end users in a country listed in § 740.20(c)(1) are authorized through License Exception STA under § 740.20(c)(1) as long as the item at issue at the time of export, reexport or transfer (in-country) is ultimately destined for end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies of a government of one of the § 740.20(c)(1) countries.

(ii) ''600 series'' ''parts,'' ''components,'' ''accessories'' and ''attachments,'' or any item classified in a ''600 series'' product group B or C ECCN may only be authorized by the following license exceptions:

(A) License Exception LVS (§ 740.3);

(B) License Exception TMP (§ 740.9);

(C) License Exception RPL (§ 740.10);

(D) License Exception GOV (§ 740.11(b)(2)(ii) or (b)(2)(iii)). License Exception GOV paragraph (b)(2)(iii) is only available for countries listed in § 740.20(c)(1); or

(E) License Exception STA under § 740.20(c)(1), provided the ultimate end use for the ''parts,'' ''components,'' ''accessories and attachments'' or for any item classified in a ''600 series'' product group B or C ECCN is by a government in one of the countries listed in § 740.20(c)(1). Exports and reexports to non-governmental end users in a country listed in § 740.20(c)(1) are authorized through License Exception STA under § 740.20(c)(1) as long as the item at issue at the time of export, reexport or transfer (in-country) is ultimately destined for end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies of a government of one of the § 740.20(c)(1) countries. This provision does not alter the limitations on the use of License Exception STA contained in § 740.20(b)(2).

(iii) ''600 series'' ''software'' and ''technology'' may only be authorized by the following license exceptions:

(A) License Exception GOV (§ 740.11(b)(2)(ii) or (b)(2)(iii)). License Exception GOV paragraph (b)(2)(iii) is only available for countries listed in § 740.20(c)(1);

(B) License Exception TSU (§ 740.13(a) or (b)); or

(C) License Exception STA (§ 740.20(c)(1)), provided the ultimate end use for the ''software'' or ''technology'' is by a government in one of the countries listed in § 740.20(c)(1). Exports and reexports to non-governmental end users in a country listed in § 740.20(c)(1) are authorized through License Exception STA under § 740.20(c)(1) as long as the item at issue at the time of export, reexport or transfer (in-country) is ultimately destined for end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies of a government of one of the § 740.20(c)(1) countries. This provision does not alter the limitations on the use of License Exception STA contained in § 740.20(b)(2).

(14) Items classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 may only be authorized by License Exception GOV (§ 740.11(b)(2)(ii)).

Note to paragraph (a): Items subject to the exclusive export control jurisdiction of another agency of the U.S. Government may not be authorized by a license exception or any other authorization under the EAR. If your item is subject to the exclusive jurisdiction of another agency of the U.S. Government, you must determine your export licensing requirements pursuant to the other agency's regulations. See § 734.3(b) and Supplement No. 3 to part 730 for other U.S. Government Departments and Agencies with Export Control Responsibilities.

* * * * *

12. Section 740.10 is amended:

a. By revising the heading of the section;

b. By revising the introductory text of the section;

c. By revising paragraph (a);

d. By revising paragraph (b)(1);

e. By revising paragraph (b)(2)(ii);

f. By revising paragraph (b)(3)(i);

g. By revising paragraph (b)(3)(ii)(C); and

h. By revising paragraph (c), to read as follows:

§ 740.10 Servicing and replacement of parts, components, accessories, and attachments (RPL).

This License Exception authorizes exports and reexports associated with one-for-one replacement of parts, components, accessories, and attachments. License Exception RPL also authorizes exports and reexports of certain items currently ''subject to the EAR'' to or for, or to replace, a defense article described in an export or reexport authorization issued under the authority of the Arms Export Control Act. It does not, however, authorize the export or reexport of ''parts,'' ''components,'' ''accessories and attachments'' that are ''defense articles'' currently identified on the United States Munitions List (22 CFR 121.1).

(a) *''Parts,'' ''Components,'' ''Accessories and Attachments''*—(1) *Scope.* The provisions of this paragraph (a) authorize the export and reexport of one-for-one replacement parts, components, accessories, and attachments for previously exported equipment or other end items.

(2) *One-for-one replacement of parts, components, accessories, or attachments.* (i) The *terms replacement parts, components, accessories, or attachments* as used in this section mean parts, components, accessories, or attachments needed for the immediate

repair of equipment or other end items, including replacement of defective or worn parts or components. (It includes 'subassemblies' but does not include test instruments or operating supplies.) (The term '*subassembly*' means a number of parts or components assembled to perform a specific function or functions within a commodity. One example would be printed circuit boards with components mounted thereon. This definition does not include major subsystems such as those composed of a number of subassemblies.) Items that improve or change the basic design characteristics, e.g., as to accuracy, capability, performance or productivity, of the equipment or other end item upon which they are installed, are not deemed to be replacement parts, components, accessories, or attachments. For kits consisting of replacement parts or components, consult § 740.9(a)(2)(ii) of this part.

(ii) Parts, components, accessories, and attachments may be exported only to replace, on a one-for-one basis, parts, components, accessories, or attachments, respectively, contained in commodities that were: lawfully exported from the United States; lawfully reexported; or made in a foreign country incorporating authorized U.S.-origin parts, components, accessories, or attachments. ''600 series'' parts, components, accessories and attachments may be exported only to replace, on a one-for-one basis, parts, components, accessories, or attachments that were: lawfully exported from the United States; or lawfully reexported. (For exports or reexports to the installed base in Libya, see § 764.7 of the EAR.) The conditions of the original U.S. authorization must not have been violated. Accordingly, the export of replacement parts, components, accessories, and attachments may be made only by the party who originally exported or reexported the commodity to be repaired, or by a party that has confirmed the existence of appropriate authority for the original transaction.

(iii) The parts, components, accessories, or attachments to be replaced must either be destroyed abroad or returned promptly to the person who supplied the replacements, or to a foreign firm that is under the effective control of that person.

(3) *Exclusions to License Exception RPL.* (i) No replacement parts, components, accessories, or attachments may be exported to repair a commodity exported under a license or other authorization if that license or other authorization included a condition that any subsequent replacements must be exported only under a license.

(ii) No parts, components, accessories, or attachments may be exported to be held abroad as spares for future use. Replacements may be exported to replace spares that were authorized to accompany the export of equipment or other end items, as those spares are used in the repair of the equipment or other end item. This is intended to allow maintenance of the stock of spares at a consistent level as the parts, components, accessories, or attachments are used.

(iii) No parts, components, accessories, or attachments may be exported to any destination, except the countries listed in Supplement No. 3 to part 744 of the EAR (Countries Not Subject to Certain Nuclear End Use Restrictions in § 744.2(a)), if the item is to be incorporated into or used in nuclear weapons, nuclear explosive devices, nuclear testing related to activities described in § 744.2(a) of the EAR, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear materials, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 744.2(a) of the EAR.

(iv) No replacement parts, components, accessories, or attachments may be exported to countries in Country Group E:1 (see Supplement No. 1 to this part) (countries designated by the Secretary of State as supporting acts of international terrorism) if the commodity to be repaired is an ''aircraft'' (as defined in part 772 of the EAR) or is controlled for NS reasons.

(v) No replacement parts may be exported to countries in Country Group E:1 if the commodity to be repaired is explosives detection equipment classified under ECCN 2A983 or related software classified under ECCN 2D983.

(vi) No replacement parts may be exported to countries in Country Group E:1 if the commodity to be repaired is concealed object detection equipment classified under ECCN 2A984 or related software classified under ECCN 2D984.

(vii) The conditions described in this paragraph (a)(3) relating to replacement of parts, components, accessories, or attachments do not apply to reexports to a foreign country of parts, components, accessories, or attachments as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or the exceptions in § 734.4 of the EAR (*de minimis* U.S. content).

(vii) Parts, components, accessories, and attachments classified in ''600 Series'' ECCNs may not be exported or reexported to a country identified in § 740.2(a)(12).

(4) *Reexports.* (i) Parts, components, accessories, and attachments exported from the United States may be reexported to a new country of destination, provided that the conditions established in paragraphs (a)(2) and (3) of this section are met. A party reexporting U.S.-origin one-for-one replacement parts, components, accessories, or attachments shall ensure that the commodities being repaired were shipped to their present location in accordance with U.S. law and continue to be lawfully used, and that either before or promptly after reexport of the replacement parts, components, accessories, or attachments, the replaced commodities and software are either destroyed or returned to the United States, or to the foreign firm in Country Group B (see Supplement No. 1 to part 740) that shipped the replacement parts.

(ii) The conditions described in paragraph (a)(3) relating to replacement of parts, components, accessories, or attachments (excluding ''600 series'' ECCNs) do not apply to reexports to a foreign country of parts, components, accessories, or attachments as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or the foreign-origin product is not subject to the EAR pursuant to § 734.4.

(b) *Servicing and replacement*—(1) *Scope.* The provisions of this paragraph (b) authorize the export and reexport to any destination, except destinations identified in § 740.2(a)(12) or otherwise prohibited under the EAR, of commodities and software that were returned to the United States for servicing and the replacement of defective or unacceptable U.S.-origin commodities and software.

(2) * * *

(ii) *Return of serviced commodities and software.* When the serviced commodity or software is returned, it may include any replacement or rebuilt parts, components, accessories, or attachments necessary to its repair and may be accompanied by any spare part, component, tool, accessory, attachment or other item that was sent with it for servicing.

* * * * *

(3) * * *

(i) Subject to the following conditions, commodities or software may be exported or reexported to replace

defective or otherwise unusable (e.g., erroneously supplied) items.

(A) The commodity or software is ''subject to the EAR.''

(B) The commodity or software to be replaced must have been previously exported or reexported in its present form under a license or authorization granted by BIS or an authorization, e.g., a license or exemption, issued under the authority of the Arms Export Control Act.

(C) No commodity or software may be exported or reexported to replace equipment that is worn out from normal use, nor may any commodity or software be exported to be held in stock abroad as spare equipment for future use.

(D) The replacement item may not improve the basic characteristic, e.g., as to accuracy, capability, performance, or productivity, of the equipment as originally authorized, e.g., under a license, license exception or an exemption, for export or reexport.

(E) No shipment may be made to countries in Country Group E:1 (see Supplement No. 1 to this part), or to any other destination to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a national of any of those countries.

(F) Commodities or software ''subject to the EAR'' and classified in ''600 Series'' ECCNs may not be exported or reexported to a destination identified in § 740.2(a)(12).

(ii) * * *

(C) The commodity or software to be replaced must either be destroyed abroad or returned to the United States, or to a foreign firm in Country Group B that is under the effective control of the exporter, or to the foreign firm that is providing the replacement part or equipment. The destruction or return must be effected before, or promptly after, the replacement is exported from the United States.

* * * * *

(c) *Special recordkeeping requirements: ECCNs 2A983, 2A984, 2D983 and 2D984, and ''600 Series'' ECCNs.* (1) In addition to the other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this section, for any items exported or reexported pursuant to License Exception RPL to repair, replace, or service previously lawfully exported or reexported items classified under ECCNs 2A983, 2A984, 2D983 and 2D984 or a ''600 Series'' ECCN. The following information must be maintained for each such export or reexport transaction:

(i) A description of the item replaced, repaired or serviced;

(ii) The type of repair or service;

(iii) Certification of the destruction or return of item replaced;

(iv) Location of the item replaced, repaired or serviced;

(v) The name and address of those who received the items for replacement, repair, or service;

(vi) Quantity of items shipped; and

(vii) Country of ultimate destination.

(2) Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR. Records that must be included in the annual or semi-annual reports of exports and reexports of ''600 Series'' items under the authority of License Exception RPL are described in § 743.4 and § 762.2(b)(4), (b)(47) and (b)(48).

13. Section 740.11 is amended by adding paragraph (b)(3)(iii), to read as follows:

§ 740.11 Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

* * * * *

(b) * * *

(3) * * *

(iii) *Agency of a government eligible to receive ''600 series'' items.* Only the countries listed in § 740.20(c)(1) are eligible to receive ''600 series'' items.

* * * * *

14. Section 740.20 is amended:

a. By adding a Note to paragraph (c)(1); and

b. By adding paragraph (g), to read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

* * * * *

(c) * * *

Note to paragraph (c)(1). License Exception STA under § 740.20(c)(1) may be used to authorize the export, reexport or transfer (in-country) of ''600 series'' items, provided the ultimate end-use for the ''parts,'' ''components,'' ''accessories and attachments'' or for any item classified in a ''600 series'' product group B or C ECCN is by a government in one of the countries listed in § 740.20(c)(1). For ''600 series'' end items, see paragraph (g) of this section. Exports and reexports to non-governmental end-users in a country listed in § 740.20(c)(1) are authorized through License Exception STA under § 740.20(c)(1) as long as the item at issue at the time of export, reexport or transfer (in-country) is ultimately destined for end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, and search and rescue agencies of a government of one of the § 740.20(c)(1) countries. This provision does not alter the limitations on the use of License Exception STA contained in § 740.20(b)(2).

* * * * *

(g) *License Exception STA eligibility requests for ''600 series'' end items.*

(1) *Applicability.* Exporters, reexporters and transferors may request License Exception STA eligibility for ''end items'' classified in a ''600 series'' product group A ECCN. License Exception STA requests under this paragraph (g) may only be submitted together with a license application submitted to BIS for an export, reexport or transfer (in-country) of an ''end item'' classified in a ''600 series'' product group A ECCN.

(2) *Required information for requests.* A License Exception STA eligibility request must include the following statement, ''Request for additional License Exception STA eligibility for ECCN(s) ''xA6zz.'' For information on what information must be submitted and the information required in the BIS–748P Multipurpose Application form, see Supplement No. 2 to part 748.

(3) *Timeline for USG review.* The U.S. Government reviews license applications and License Exception STA eligibility requests at the same time to determine whether either submission should be approved. Both license applications for ''600 series'' items and License Exception STA eligibility requests would be reviewed in accordance with the timelines set forth in Executive Order 12981 and § 750.4. If the License Exception STA request is approved, the process outlined in paragraph (g)(5)(i) of this section is followed.

(4) *Review criteria.* The Departments of Commerce, Defense and State will determine whether the item is eligible for this license exception based on an assessment of whether it provides a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies. If the item does not provide a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies, the Departments will determine that License Exception STA is available unless an overarching foreign policy rationale for restricting STA availability can be articulated. Consensus between the Departments is required in order for an ''end item'' to be eligible for License Exception STA. Such determinations are made by the departments' representatives to the Advisory Committee on Export Policy (ACEP), or their designees.

(5) *Disposition of License Exception STA eligibility requests.*

(i) *Approvals.* If the request is approved, the applicant will receive written notification from BIS authorizing the use of the additional License Exception STA for the specific items requested. Applicants who receive an approval request may share that written notification with companies affiliated with them, such as a branch or distributor, and may also take steps to make it public (e.g., on their Web site) if the applicants so wish. In addition, BIS will add a description of the approved end item in an online table which will use the same format as Supplement No. 4 to part 774, which removes the restriction on the use of License Exception STA for the end item identified in the approved request. The description of these end items will be posted on the BIS Web site (typically within 30 calendar days from date on which the approved response was sent), informing other exporters, reexporters and transferors of the additional license exception eligibility for that ''600 series'' product group A ECCN. Within approximately three months after such a written response was sent to the applicant (i.e., the date of the BIS response sent to the applicant), in either a January, April, July, or October quarterly update of Supplement No. 4 to part 774 (Listing of License Exception STA Eligibility Determinations Pursuant to § 740.20(g) for ''600 Series'' ''End Items'' Eligible for License Exception STA under § 740.20(c)(1)), BIS will publish a final rule adding this license exception eligibility to the EAR for that ECCN entry.

(ii) *Denials.* If the STA eligibility request is not approved, the license application will be reviewed under the normal license review process described in part 750. The STA eligibility review is completed concurrently with the license application review period. The license application will be reviewed in accordance with the license review policies in part 742 (and parts 744 and/or 746, if applicable). Interagency review of license applications is conducted without regard to the disposition of an STA eligibility request. Applicants may re-submit STA eligibility requests at any time.

(iii) *Recordkeeping requirements for approved License Exception STA eligibility requests.* BIS written responses to License Exception STA eligibility requests (either from the BIS Web site or in original form) must be kept in accordance with the recordkeeping requirements in part 762 of the EAR.

PART 742—[AMENDED]

15. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010).

16. Section 742.4 is amended by revising paragraph (b)(1), to read as follows:

§ 742.4 National security.

* * * * *

(b) *Licensing policy.* (1)(i) The policy for national security controlled items exported or reexported to any country except a country in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) is to approve applications unless there is a significant risk that the items will be diverted to a country in Country Group D:1.

(ii) When destined to a country subject to a United States arms embargo (see § 740.2(a)(12), however, items classified under ''600 series'' ECCNs are subject to a general policy of denial.

* * * * *

17. Section 742.6 is amended:

a. By revising paragraph (a)(1);

b. In the introductory text of paragraph (a)(4)(i) by removing the text ''and .b'' after the text ''9A018.a'' in three places where the text appears;

c. By adding paragraph (a)(7); and

d. By revising the first sentence of paragraph (b)(1), to read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) *RS Column 1 License Requirements in General.* As indicated in the CCL and in RS column 1 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 0A521; 0A606 (except 0A606.y); 0B521; 0B606 (except 0B606.y); 0C521; 0C606 (except 0C606.y); 0D521; 0D606 (except 0D606.y); 0E521; 0E606 (except 0E606.y); 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3, and b.4.a; 6A008.j.1; 6A998.b; 6D001 (only ''software'' for the ''development'' or ''production'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002 (only ''software'' for the ''use'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D003.c; 6D991 (only ''software'' for the ''development,'' ''production,'' or ''use'' of equipment classified under 6A002.e or 6A998.b); 6E001 (only ''technology'' for ''development'' of items in 6A002.a.1, a.2, a.3 (except 6A002.a.3.d.2.a and 6A002.a.3.e for lead selenide focal plane arrays), and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only ''technology'' for ''production'' of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only ''technology'' for the ''development,'' ''production,'' or ''use'' of equipment classified under 6A998.b); 6D994; 7A994 (only QRS11–00100–100/101 and QRS11–0050–443/569 Micromachined Angular Rate Sensors); 7D001 (only ''software'' for ''development'' or ''production'' of items in 7A001, 7A002, or 7A003); 7E001 (only ''technology'' for the ''development'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only ''technology'' for the ''production'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only ''technology'' for the ''use'' of inertial navigation systems, inertial equipment, and specially designed components for civil aircraft).

* * * * *

(7) *RS Column 1 license requirements and related policies for '0Y521.'*

(i) *Scope.* This paragraph (a)(7) supplements the information in the '0Y521' ECCNs and in Supplement No. 5 to part 774 (Items Classified Under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521). This subparagraph alerts exporters, reexporters and transferors to the procedures that apply to items classified under the '0Y521' ECCNs.

(ii) *'0Y521' Items.* Items subject to the EAR that are not listed elsewhere in the CCL, but which the Department of Commerce, with the concurrence of the Departments of Defense and State has determined should be controlled for export because the items provide at least a significant military or intelligence advantage to the United States or for foreign policy reasons shall be classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521. These items are typically emerging technologies (including emerging commodities, software and technology) that are not otherwise yet included in the CCL, so such items are listed on the CCL through ECCNs '0Y521' until the items are classified under another ECCN.

(iii) *Requirement to be classified under another ECCN within one calendar year of classification under ECCN '0Y521.'* Items classified under an ECCN '0Y521' entry must be re-classified within one calendar year from the date they are listed in Supplement No. 5 to part 774 of the EAR. If such re-classification does not occur within that period, classification under an ECCN '0Y521' entry expires, and such items are designated as EAR99 items unless the CCL is amended to either impose a control on such items under another ECCN or to re-extend for another one-year period (not to exceed two extensions) the classification under ECCN '0Y521.'

(b) *Licensing policy.* (1) Applications for exports and reexports described in paragraph (a)(1), (a)(2), (a)(6) or (a)(7) of this section will be reviewed on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would alter or destabilize a region's military balance contrary to the foreign policy interests of the United States.

* * * * *

PART 743—[AMENDED]

18. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

19. Section 743.1 is amended by adding two sentences at the end of the introductory text of paragraph (a), to read as follows:

§ 743.1 Wassenaar Arrangement.

(a) * * * This section is limited to the Wassenaar Arrangement reporting requirements for items listed on the Wassenaar Arrangement's Dual-Use list. For reporting requirements for conventional arms listed on the Wassenaar Arrangement Munitions List that are subject to the EAR (i.e., ''600 series'' ECCNs), see § 743.4 of this part for Wassenaar Arrangement and United Nations reporting requirements.

* * * * *

20. Add § 743.4, to read as follows:

§ 743.4 Conventional arms reporting.

(a) *Scope.* This section outlines special reporting requirements for exports of certain items controlled under the Wassenaar Arrangement Munitions List and the UN Register of Conventional Arms. Participating States of the Wassenaar Arrangement exchange information every six months on deliveries to non-participating states of conventional arms set forth in the *Wassenaar Arrangement's Basic Documents* under Part II Guideline and Procedures, including the Initial Elements, Appendix 3: Specific Information Exchange on Arms Content by Category (at *http://www.wassenaar.org*), derived from the categories of the UN Register of Conventional Arms (at *http://www.un.org/disarmament/convarms/Register/HTML/RegisterIndex.shtml*). Similar, although not identical information is also reported by the U.S. Government to the United Nations on an annual basis. The reported information should include the quantity and the name of the recipient state and, except in the category of missiles and missile launchers, details of model and type. Such reports must be submitted to BIS semi-annually in accordance with the provisions of paragraph (f) of this section for items identified in paragraph (c)(1) and annually for items identified in paragraph (c)(2), and records of all exports subject to the reporting requirements of this section must be kept in accordance with part 762 of the EAR. This section does not require reports for reexports or transfers (in-country).

Note to paragraph (a): For purposes of § 743.4, the term ''you'' has the same meaning as the term ''exporter'', as defined in part 772 of the EAR.

(b) *Requirements.* You must submit one electronic copy of each report required under the provisions of this section and maintain accurate supporting records (see § 762.2(b) of the EAR) for all exports of items specified in paragraph (c) of this section for the following:

(1) Exports authorized under License Exceptions LVS, TMP, RPL, STA, or GOV (see part 740 of the EAR);

(2) Exports authorized under the Special Comprehensive License procedure (see part 752 of the EAR); and

(3) Exports authorized under the Validated End User authorization (see § 748.15 of the EAR).

(c) *Items for which reports are required —.* (1) Wassenaar Arrangement reporting. You must submit reports to BIS under the provisions of this section only for exports of items classified under the following ECCNs:

(i) [RESERVED]

(ii) [RESERVED]

(2) *United Nations reporting.* You must submit reports to BIS under the provisions of this section only for exports of items classified under the following ECCNs:

(i) [RESERVED]

(ii) [RESERVED]

(d) *Country Exceptions for Wassenaar Arrangement reporting.* You must report each export subject to the provisions of this section, except for exports to Wassenaar member countries, identified in Supplement No. 1 to part 743 for reports required under paragraph (c)(1) of this section.

(e) *Information that must be included in each report.* (1) Each report submitted to BIS for items other than those identified in paragraph (e)(2) of this section must include the following information for each export during the time periods specified in paragraph (f) of this section:

(i) Export Control Classification Number and paragraph reference as identified on the Commerce Control List;

(ii) Number of units in the shipment; and

Note to paragraph (e)(1)(ii): For exports of technology for which reports are required under § 743.1(c) of this section, the number of units in the shipment should be reported as one (1) for the initial export of the technology to a single ultimate consignee. Additional exports of the technology must be reported only when the type or scope of technology changes or exports are made to other ultimate consignees.

(iii) Country of ultimate destination.

(f) *Frequency and timing of reports—* (1) *Semi-annual reports for items identified in paragraph (c)(1) of this section.* You must submit reports subject to the provisions of this section semiannually. The reports must be labeled with the exporting company's name and address at the top of each page and must include for each such export all the information specified in paragraph (e) of this section. The reports shall cover exports made during six month time periods spanning from January 1 through June 30 and July 1 through December 31.

(i) The first report must be submitted to and received by BIS no later than [INSERT DATE] for the partial reporting period beginning [INSERT DATE] and ending [INSERT DATE]. Thereafter, reports are due according to the provisions of paragraphs (f)(2) and (f)(3) of this section.

(ii) Reports for the reporting period ending June 30 must be submitted to and received by BIS no later than August 1.

(iii) Reports for the reporting period ending December 31 must be submitted to and received by BIS no later than February 1.

(2) *Annual reports for items identified in paragraph (c)(2) of this section.* You must submit reports subject to the provisions of this section annually. The reports must be labeled with the

exporting company's name and address at the top of each page and must include for each such export all the information specified in paragraph (e) of this section. The reports shall cover exports made during twelve month time periods spanning from January 1 through December 31.

(i) The first report must be submitted to and received by BIS no later than [INSERT DATE] for the partial reporting period beginning [INSERT DATE] and ending [INSERT DATE]. Thereafter, reports are due according to the provisions of paragraph (f)(2) of this section.

(ii) Reports for the reporting period ending December 31 must be submitted to and received by BIS no later than February 1.

(g) *Submission of reports.* Information should be submitted in the form of an EXCEL spreadsheet and e-mailed to *WAreports@BIS.DOC.GOV* or *UNreports@BIS.DOC.GOV.*

(h) *Contacts.* General information concerning the Wassenaar Arrangement and reporting obligations thereof is available from the Office of National Security and Technology Transfer Controls, Tel. (202) 482–0092, Fax: (202) 482–4094.

PART 744—[AMENDED]

21. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010): Notice of January 13, 2011, 76 FR 3009, January 18, 2011.

22. Section 744.17 is amended:

a. By revising the section heading; and

b. By revising paragraph (d), to read as follows:

§ 744.17 Restrictions on certain exports and reexports of general purpose microprocessors for 'military end uses' and to 'military end users.'

* * * * *

(d) *Military end use.* In this section, the phrase 'military end use' means incorporation into: a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations) or the Wassenaar Arrangement Munitions List (as set out on the Wassenaar Arrangement Web site at *http://www.wassenaar.org*); commodities classified under ECCNs ending in ''A018'' or under ''600 series'' product group A, B, or C ECCNs; or any item that is designed for the ''use,'' ''development,'' ''production,'' or deployment of military items described on the USML, the Wassenaar Arrangement Munitions List or classified under ECCNs ending in ''A018'' or under ''600 series'' product group A, B, or C ECCNs. Supplement No. 1 of this part lists examples of 'military end use.'

* * * * *

23. Section 744.21 is amended by revising the first sentence of paragraph (f), to read as follows:

§ 744.21 Restrictions on certain military end uses in the People's Republic of China (PRC).

* * * * *

(f) In this section, 'military end use' means: incorporation into a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations); incorporation into a military item described on the Wassenaar Arrangement Munitions List (as set out on the Wassenaar Arrangement Web site at *http://www.wassenaar.org*); incorporation into items classified under ECCNs ending in ''A018'' or under ''600 series'' product group A, B or C ECCNs; or for the ''use,'' ''development,'' or ''production'' of military items described on the USML or the Wassenaar Arrangement Munitions List, or items classified under ECCNs ending in ''A018'' or under ''600 series'' product group A, B or C ECCNs.

* * *

* * * * *

24. Supplement No. 2 to part 744 (List of Items Subject to the Military End-Use License Requirement of § 744.21) is amended:

a. By revising the introductory text of the Supplement; and

b. By adding paragraph (10), to read as follows:

SUPPLEMENT NO. 2 TO PART 744—LIST OF ITEMS SUBJECT TO THE MILITARY END-USE LICENSE REQUIREMENT OF § 744.21

The following items, as described, are subject to the military end-use license requirement in § 744.21. See paragraph (10) for items classified under the ''600 series.''

* * * * *

(10) *''600 series.''*

(i) Any item classified in paragraph .y of a ''600 series'' entry (e.g., 0A606.y).

(ii) [Reserved]

PART 746—[AMENDED]

25. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007–7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

26. Section 746.3 is amended by revising paragraph (b)(2), to read as follows:

§ 746.3 Iraq.

* * * * *

(b) * * *

(2) License applications for the export or reexport to Iraq or transfer within Iraq of machine tools controlled for national security (NS) or nuclear nonproliferation (NP) reasons, as well as for any items controlled for crime control (CC) or United Nations (UN) reasons (including items classified under ECCN 0A986) or ECCNs that end in the number ''018'' or items classified under ''600 series'' ECCNs, that would make a material contribution to the production, research, design, development, support, maintenance or manufacture of Iraqi weapons of mass destruction, ballistic missiles or arms and related materiel will be subject to a general policy of denial.

* * * * *

PART 748—[AMENDED]

27. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

28. Section 748.8 is amended by adding paragraph (w), to read as follows:

§ 748.8 Unique application and submission requirements.

* * * * *

(w) License Exception STA eligibility requests for ''600 series'' end items.

29. Supplement No. 2 to part 748 (Unique Application and Submission Requirements) is amended by adding paragraph (w), to read as follows:

SUPPLEMENT NO. 2 TO PART 748—UNIQUE APPLICATION AND SUBMISSION REQUIREMENTS

* * * * *

(w) *License Exception STA eligibility requests for ''600 series'' end items.* To request a License Exception STA eligibility requests for ''600 series'' items pursuant to § 740.20(g), you must specify ''License Exception STA request pursuant to 740.20(g)'' in Block 9 (Special Purpose) and mark ''export'' or ''reexport'' as applicable in Block 5 (Type of Application) of the BIS–748P ''Multipurpose Application'' form. If the application is for an ''in-country (transfer)'' follow the instructions in Supplement No. 2 to part 748 under paragraph (v) to mark in Block 9 (Special Purpose) for in-country transfer and License Exception STA eligibility request pursuant to § 740.20(g), along with marking ''reexport'' in Block 5. Applicants will need to provide sufficient information for the U.S. Government to make such a determination. This will require the applicant to submit more than merely a description of the end item. In particular, the applicant will need to provide supporting information for why it believes that the item does not, for example, provide a critical military or intelligence advantage to the United States or is otherwise available in countries that are not regime partners or close allies. The applicant will also need to provide information regarding whether and, if so, how the item is controlled by the export control laws and regulations of close allies and regime partners, if known. The applicant should provide BIS with the text it would propose BIS use in describing the end item in Supplement No. 4 to part 774 and the online table referenced in § 740.20(g)(5)(i) in anticipation the request may be approved pursuant to § 740.20(g). You may submit additional information that you believe is relevant to the U.S. Government in reviewing the License Exception STA eligibility request either under Block 24 (Additional Information) or as a separate support document attachment to the license application.

PART 756—[AMENDED]

30. The authority citation for 15 CFR part 756 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

31. Section 756.1 is amended by adding paragraph (a)(4), to read as follows:

§ 756.1 Introduction.

(a) * * *

(4) A decision to make License Exception STA available for ''600 series'' ''end items'' pursuant to § 740.20(g).

* * * * *

PART 762—[AMENDED]

32. The authority citation for 15 CFR part 762 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

33. Section 762.2 is amended:

a. By revising paragraph (b)(4);

b. In paragraph (b)(45) by removing the ''and'' at the end of the paragraph;

c. In paragraph (b)(46) by removing the period at the end of the paragraph and adding a semi-colon at the end of the paragraph; and

d. By adding paragraphs (b)(47) and (b)(48), to read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(4) § 740.10, Servicing and replacement of parts, components, accessories, and attachments (RPL);

* * * * *

(47) § 743.4, Conventional Arms Reporting under (c)(1) and (c)(2); and

(48) § 740.20(g), Responses to License Exception STA eligibility requests for ''600 series'' end items.

* * * * *

PART 770—[AMENDED]

34. The authority citation for 15 CFR part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

35. Section 770.2 is amended by revising paragraph (h), to read as follows:

§ 770.2 Item interpretations.

* * * * *

(h) *Interpretation 8: Ground vehicles.* (1) BIS has export licensing jurisdiction over ground transport vehicles (including trailers), parts, and components therefor specially designed or modified for non-combat military use. Vehicles in this category are primarily transport vehicles designed or modified for transporting cargo, personnel and/or equipment, or to move other vehicles and equipment over land and roads in close support of fighting vehicles and troops. BIS also has export licensing jurisdiction over unarmed civil vehicles that are all-wheel drive sport utility vehicles capable of off-road use which have been manufactured or fitted with materials to provide ballistic protection, including protection to level III (as defined by the Department of Justice's National Institute of Justice Standard 0108.01, September 1985) or better. In this section, and in ECCN 0A606, the word ''unarmed'' means not having weapons installed, not having mountings for weapons installed, and not having special reinforcements for mountings for weapons.

(2) Modification of a ground vehicle for military use entails a structural, electrical or mechanical change involving one or more ''specially designed'' military components. Such components include, but are not limited to:

(i) Pneumatic tire casings of a kind designed to be bullet-proof or to run when deflated;

(ii) Tire inflation pressure control systems, operated from inside a moving vehicle;

(iii) Armored protection of vital parts, (e.g., fuel tanks or vehicle cabs);

(iv) Special reinforcements for mountings for weapons; and

(v) Black-out lighting.

(3) Scope of ECCN 0A606.b.4 and ground vehicles designated as EAR99.

(i) Ground transport vehicles (including trailers) ''specially designed'' for non-combat military use are classified under ECCN 0A606.b.4.

(ii) Unarmed civil all-wheel drive vehicles capable of off-road use that are not described in paragraph (h)(4) of this section and which have been manufactured or fitted with materials to provide ballistic protection to level III (as defined by DOJ's National Institute of Justice Standard 0108.01, September 1985) or better are classified under ECCN 0A606.b.4.

Note 1 to paragraph (h)(3)(ii): ECCN 0A606.b.4 does not include 'civil automobiles', or trucks designed or modified for transporting money or valuables, having armored or ballistic protection, even if the automobiles or trucks incorporate items described in paragraphs (h)(2) (i), (ii), or (iii) of this section, provided the 'civil automobile' is not an all-wheel drive vehicle capable of off-road use.

Note 2 to paragraph (h)(3)(ii). In this section, the term 'civil automobile' means a passenger car, limousine, van or sport utility vehicle designed for the transportation of passengers and marketed through civilian channels in the United States.

(iii) Certain ''parts,'' ''components,'' ''accessories,'' and ''attachments'' that are related to items classified under ECCN 0A606.b.4 will be specifically identified in the respective subparagraphs of ECCN 0A606.b.4. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity classified under ECCN 0A606 or a defense article in USML Category VII are classified under 0A606.x. Specific ''parts,'' ''components,'' ''accessories,''

''attachments'' of less military significance, but warrant AT-controls that are related to items classified under ECCN 0A606.b are classified under 0A606.y.

(iv) *EAR99.* Ground vehicles that are not described in paragraph (h)(4) of this section and that are not classified under either ECCN 0A606 or 9A990 are designated as EAR99 items, meaning that they are subject to the EAR, but not listed in any specific ECCN.

(4) *Related control.* The Department of State, Directorate of Defense Trade Controls (DDTC) has export licensing jurisdiction for all military ground armed or armored vehicles and parts and components specific thereto as described in 22 CFR part 121, Category VII. DDTC also has export licensing jurisdiction for all-wheel drive vehicles capable of off-road use that have been armed or armored with articles described in 22 CFR part 121 or that have been manufactured or fitted with special reinforcements for mounting arms or other specialized military equipment described in 22 CFR part 121.

* * * * *

PART 772—[AMENDED]

36. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

37. Section 772.1 is amended:

a. By revising the definition of ''military commodity,'' and ''specially designed;'' and

b. By adding the following ten definitions for the terms ''600 series,'' ''accessories and attachments,'' ''component,'' ''end item,'' ''equipment,'' ''facilities,'' ''material,'' ''part,'' ''serial production,'' and ''system'' as set forth below:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

600 series. This is a control series in the ''xY6zz'' format on the Commerce Control List (CCL) that controls items on the CCL that were previously controlled on the United States Munitions List or because they are covered by the Wassenaar Arrangement Munitions List (WAML). The ''6'' indicates the entry is a munitions entry on the CCL. The ''x'' represents the CCL category and ''Y'' the CCL category of the respective ''600 series'' ECCNs, such as ECCN 0A606. The ''600 series'' constitutes the Commerce Munitions List within the larger CCL.

* * * * *

Accessories and attachments. These are associated items for any ''component,'' ''end item,'' or ''system,'' and which are not necessary for their operation, but which enhance their usefulness or effectiveness. For example, for a riding lawnmower, accessories and attachments will include the bag to capture the cut grass, and a canopy to protect the operator from the sun and rain.

* * * * *

Component. This is an item that is useful only when used in conjunction with an ''end item.'' Components are also commonly referred to as assemblies. For purposes of this definition an assembly and a component are the same. There are two types of ''components'': ''Major components'' and ''minor components.'' A ''major component'' includes any assembled element which forms a portion of an ''end item'' without which the end item is inoperable. For example, for an automobile, components will include the engine, transmission, and battery. If you do not have all those items, the automobile will not function, or function as effectively. A ''minor component'' includes any assembled element of a ''major component.'' ''Components'' consist of 'parts.''' References in the CCL to ''components'' include both ''major components'' and ''minor components.''

* * * * *

End item. This is a combination of ''components,'' ''parts,'' ''accessories and attachments,'' or material in the form of a product, system, or piece of equipment that is ready for its intended stand-alone use, such as a ship, aircraft, firearm, or milling machine.

* * * * *

Equipment. This is a set of tools, devices, kits, or similar items assembled for a specific purpose. Equipment is a subset of ''end items.''

* * * * *

Facilities. This means a building or outdoor area in which people use an item that is built, installed, produced, or developed for a particular purpose.

* * * * *

Material. This is any list-specified crude or processed matter that is not clearly identifiable as any of the types of items defined in section 772.1 under the defined terms, ''end item,'' ''component,'' ''accessories and attachments,'' ''part,'' ''software,'' ''system,'' ''equipment,'' or ''facilities.''

* * * * *

Military commodity. As used in § 734.4(a)(5), Supplement No. 1 to part 738 (footnote No. 3), § 740.2(a)(11), § 740.16(a)(2), § 740.16(b)(2), § 742.6(a)(3), § 744.9(a)(2), § 744.9(b), ECCN 0A919 and ECCNs 0A606, 0B606, 0C606, 0D606, 0E606, and 6A003 (Related Controls), ''military commodity'' or ''military commodities'' means an article, material or supply that is described on the United States Munitions List (22 CFR Part 121) or on the Munitions List that is published by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, but does not include software, technology and any item listed in any ECCN for which the last three numerals are 018 or any item in the ''600 series.''

* * * * *

Part. This is any single unassembled element of a component, accessory, or attachment which is not normally subject to disassembly without the destruction or the impairment of design use. Examples include threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), common hardware (e.g., washers, spacers, insulators, grommets, bushings), springs and wire.

* * * * *

Serial production. A type of production where the ''items'' being produced are no longer in ''development.'' In this type of production the ''items'' have passed production readiness testing (i.e., an approved, standardized design ready for large scale production) and are being or have been produced based on the approved, standardized design, including and especially on assembly lines.

* * * * *

Specially designed.—

(a) A ''specially designed'' item, other than a ''part'' or ''component,'' is an item that is enumerated on the CCL and, as a result of ''development,'' has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions of the referenced item identified in the CCL.

(b) A ''specially designed'' ''part'' or ''component'' is a ''part'' or ''component'' of an item 'enumerated' in a category of the CCL.

(c) For the purposes of this definition, an item is not considered ''specially designed'' if it is separately 'enumerated' in an USML subcategory or an ECCN that does not have ''specially designed'' as a control criterion.

(d) Items that are not so separately 'enumerated' for purposes of this definition, are also not considered

''specially designed'' in any category of the CCL if they are:

(1) A single, unassembled part used in multiple types of civil items, such as threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), common hardware (e.g., washers, spacers, insulators, grommets, bushings), springs and wire; or

(2) An item specifically excluded from control on the USML or the CCL; or

(3) A ''part'' or ''component'' used as a ''part'' or ''component'' of an end-item in ''serial production'' and not 'enumerated' on the USML or CCL (i.e., the end item is an EAR99 item), and the part's or component's form, fit, and function have not been altered for use in another end item enumerated on the USML or CCL after ''serial production'' of the end-item not enumerated on the USML or CCL has begun; or

(4) A ''part'' or ''component'' that can be exchanged with an EAR99 or AT-only controlled ''part'' or ''component'' on a one-for-one replacement basis without modification to the form, fit and function of the EAR99 or AT-only ''part'' or ''component,'' and the EAR99 or AT-only part's or component's function is identical to the ''part'' or ''component'' at issue.

Note 1 to Definition: The definition of ''specially designed'' does not extend control to items simply because they could in theory be used with the listed item on the USML or CCL.

Note 2 to Definition: This definition of ''specially designed'' is not applicable to the phrase ''specifically designed'' in use throughout the U.S. Munitions List or to ''especially designed or prepared for'' in use throughout the Nuclear Regulatory Commission regulations (see 10 CFR part 110).

Note 3 to Definition: 'Enumerated' means any item identified on either the USML or CCL that is controlled for more than AT-only reasons. For example, integrated circuits are identified in both the USML Category XV(d), ECCN 3A001.a, and 3A991. An integrated circuit, therefore, is a separately enumerated item that is not a ''specially designed'' ''part'' or ''component'' for purposes of this definition if it is within the control parameters of ECCN 3A001.a, which is an ECCN controlled for more than AT-only reasons. An integrated circuit is not a separately enumerated item if it is not within the control parameters of ECCN 3A001.a, but is within the control parameters of 3A991, which is controlled only for AT reasons. An item that falls within the technical or other parameters of an existing ECCN that has more than AT-only controls is classified under that ECCN unless the ECCN includes a ''related control'' note identifying that an additional control parameter needs to be assessed in a 600 series ECCN.

Note to Exclusion Paragraph Number 1: ''Threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), common hardware (e.g., washers, spacers, insulators, grommets, bushings), springs, and wire'' are identified as representative types of items excluded from the definition of ''specially designed'' for non-enumerated items because they are commonly used in end items that are described, generally or specifically, in multiple USML and CCL categories. Bolts are in ground vehicles, planes, and ships, for example. For purposes of exclusion paragraph number 1, the part remains excluded even if it varies by physical dimensions or materials from other parts of the same type. A pivot block that is used to hold an axle assembly to a vehicle is, although a single unassembled item, only used on vehicles. Items such as pivot blocks are thus not excluded from ''specially designed'' by virtue of exclusion paragraph number 1, although they are not precluded from being excluded by another paragraph in the definition.

Note to Exclusion Paragraph Number 2: Examples of items specifically excluded from control on the USML are (i) ''aircraft'' tires and propellers used with reciprocating engines identified in USML subcategory VIII(h) and the types of items identified as not subject to USML Category VIII in the ''Note'' to that category. Examples of items specifically excluded from control on the CCL are those items that may be identified at the end of each of the 600 series ECCNs as a result of notices in response to license applications.

Note to Exclusion Paragraph Number 3: ''*Serial production''* is defined in section 772.1 as a type of production where the ''items'' being produced are no longer in ''development.'' In this type of production the ''items'' have passed production readiness testing (i.e., an approved, standardized design ready for large scale production) and are being or have been produced based on the approved, standardized design, including and especially on assembly lines. ''Development,'' is defined in EAR section 772.1 as being ''related to all stages prior to serial production, such as: Design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.'' Items in ''serial production'' that are subsequently subject to ''development'' activities, such as those pertaining to quality improvements, cost reductions, or feature enhancements, remain items in ''serial production.'' Any new models or versions of such items developed from such efforts are in ''development'' until and unless they enter into ''serial production.''

* * * * *

System. This is a combination of end items, components, parts, accessories, attachments, firmware or software that are designed, modified or adapted to operate together to perform a specialized function.

* * * * *

PART 774—[AMENDED]

38. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

39. In Supplement No. 1 to part 774 (the Commerce Control List) is amended:

a. By removing the product group A heading ''SYSTEMS, EQUIPMENT AND COMPONENTS'' and adding in its place the product group A heading ''END ITEMS,'' ''EQUIPMENT,'' ''ACCESSORIES AND ATTACHMENTS,'' ''PARTS,'' ''COMPONENTS,'' AND ''SYSTEMS''; and

b. By adding quotes around the product group C heading MATERIALS.

40. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items), Export Control Classification Number (ECCN) 0A018 is amended:

a. By revising the ''related controls'' paragraph in the List of Items Controlled section; and

b. By removing and reserving ''items'' paragraph (a) in the List of Items Controlled section, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0A018 Items on the Wassenaar Munitions List

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See also 0A979, 0A988, and 22 CFR 121.1 Categories I(a), III(b–d), and X(a). (2) See 0A606.a for construction equipment built to military specifications that was classified under 0A108.a.

* * * * *

Items:

a. [RESERVED];

* * * * *

41. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items),

ECCN 0A919 is amended by revising the ''Items'' paragraph to read as follows:

0A919 ''Military commodities'' as Follows (see List of Items Controlled)

* * * * *

Items: ''Military commodities'' with all of the following characteristics:

a. Described on either the United States Munitions List (22 CFR part 121) or the Munitions List that is published by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (as set out on its Web site at *http://www.wassenaar.org*), but not any item listed in any Export Control Classification Number for which the last three characters are 018 or any item in the ''600 series'';

b. Produced outside the United States;

c. Not subject to the International Traffic in Arms Regulations (22 CFR parts 120–130) for a reason other than presence in the United States; *and*

d. Either of the following characteristics:

d.1. Incorporate one or more cameras classified under ECCN 6A003.b.4.b; or

d.2. Incorporate more than 10% ''600 series'' controlled content.

42. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items), is amended:

a. By adding two Export Control Classification Numbers (ECCNs) 0A521 and 0A606 after ECCN 0A002 and before ECCN 0A918,

b. By adding two ECCNs 0B521 and 0B606 after ECCN 0B006 and before ECCN 0B986;

c. By adding two ECCNs 0C521 and 0C606 after ECCN 0C201 and before ECCN 0D001;

d. By adding two ECCNs 0D521 and 0D606 after ECCN 0D001 and before ECCN 0D999; and

e. By adding two ECCNs 0E521 and 0E606 after ECCN 0E001 and before ECCN 0E918, to read as follows;

0A521 Any Item Subject to the EAR That is not Listed Elsewhere in the CCL but Which is Controlled for Export Because it Provides at Least a Significant Military or Intelligence Advantage to the United States or for Foreign Policy Reasons. 0A521 Items are Subject to RS1 Controls With no License Exception Eligibility Other Than GOV for U.S. Government Personnel and Agencies Under § 740.11(b)(2)(ii). The list of Items Determined To Be Classified Under ECCN 0A521 Controls is Published in Supplement No. 5 to Part 774. The Policies and Procedures Relating to ECCN 0A521 are set Forth in 15 CFR 742.6(a)(7)

0A606 Ground Vehicles, ''Parts'' and ''Components'', as follows:

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry.	NS Column 1, except 0A606.y.
RS applies to entire entry.	RS Column 1, except 0A606.y.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Cote d'Ivoire, Democratic Republic of Congo, Eritrea, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Sierra Leone, Somalia, or Sudan, except 0A606.y.

License Exceptions

LVS: $1500 for 0A606.a, .b, .c; N/A for Cote d'Ivoire, Democratic Republic of Congo, Lebanon, Liberia, Sierra Leone, or Somalia.

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 0A606. Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may not be used for any ''end item'' in 0A606, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for ''600 series'' end items). See § 740.20(g) for the procedures to follow if you wish to request new STA eligibility for ''end items'' under this ECCN 0A606 as part of an export, reexport or in-country (transfer) license application. ''End items'' under this entry that have already been determined to be eligible for License Exception STA are listed in Supplement No. 4 to part 774 and on the BIS Web site at *http://www.bis.doc.gov* * * *.

List of Items Controlled

Unit: Equipment in number; ''parts'' and ''components'' in $ value

Related Controls: (1) See 0B606 for test, inspection and production equipment that is ''specially designed'' to test, inspect, produce, or develop commodities controlled by 0A606. (2) See 0C606 for material that is ''specially designed'' for the ''development,'' or ''production'' of commodities controlled by 0A606. (3) See 0D606 for ''software'' for the ''development'', ''production'' or ''use'' of ground vehicles, ''parts'' and ''components'' controlled by 0A606. (4) See 0E606 for ''technology'' ''required'' for the ''development'', ''production'' or ''use'' of ground vehicles, ''parts'' and ''components'' controlled by 0A606. (5) See ECCN 7A611 for guidance and navigation equipment. (6) Items described in 22 CFR part 121, Category VII—Tanks and Other Military Vehicles are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls. (7) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A

Items:

a. Construction equipment built to military specifications, including equipment ''specially designed'' for airborne transport; crew protection kits used as protective cabs;

b. Other equipment as follows:

b.1. Tanks manufactured in or prior to 1955 (unless weapon is functional);

b.2. Armored combat vehicles manufactured in or prior to 1955 (unless weapon is functional);

b.3. Armored combat support vehicles manufactured in or prior to 1955;

b.4. Armored vehicles employing armor that provides ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better but do not meet the criteria for USML Category VII control (See § 770.2(h)—Interpretation 8). This includes unarmed all-wheel drive vehicles capable of off-road use which have been manufactured or fitted with materials to provide ballistic protection to level III or better.

b.5. Ground transport vehicles (including trailers) ''specially designed'' for non-combat military use not controlled under USML Category VII);

b.6. Military railway trains, except those ''designed or modified'' for missile launch;

b.7. Unarmored military recovery vehicles;

b.8. Unarmored military amphibious vehicles;

b.9. Unarmored vehicles with mounts or hard points for firearms of .50 Cal. or less.

c. Air-cooled diesel engines and engine blocks for armored combat vehicles over 40-tons.

d. Fully automatic continuously variable transmission for tracked combat vehicles.

e. through w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories and attachments'' that are ''specially designed'' for a commodity subject to control in this ECCN or a defense article in USML Category VII.

y. Specific ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' for a commodity subject to control in this ECCN or a defense article in USML Category VII but which have little or no military significance (see list of items controlled).

y.1. Brake system components (discs, rotors, shoes, drums, springs, cylinders, lines, hoses);

y.2 Alternators or generators;

y.3. Axles;

y.4. Batteries;

y.5. Bearings (ball, roller, wheel);

y.6. Blackout lights;

y.7. Cables/cable assembles/connectors;

y.8. Cooling system hoses;

y.9. Filters (hydraulic, fuel, oil, air);

y.10. Gaskets and o-rings;

y.11. Hydraulic system hoses, fittings, couplings, adapters, and valves;

y.12. Latches and hinges;

y.13. Lighting systems, fuses and components;

y.14. Pneumatic hoses, fittings, adapters, couplings and valves;

y.15. Seats, seat assemblies, seat supports, harnesses;

y.16. Tires, except run flat;

y.17. Windows, except those for armored vehicles.

Note: Vehicles are considered manufactured after 1955 if, at any time after 1955, any of the following changes occur:

a. Propulsion upgrade to a formerly gasoline powered armored vehicle with either diesel or multi-fuel capability;

b. Armor upgrade to employ reactive armor;

c. Fire control upgrade with a digital control system;

d. Addition of laser designator or laser rangefinder;

e. Addition of autoloader or similar assisted loading/round selection;

f. Increase of gun bore to larger than 90 mm; or

g. Conversion to unmanned operation.

* * * * *

0B521 Any item subject to the EAR that is not listed elsewhere in the CCL but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons. 0B521 items are subject to RS1 controls with no license exception eligibility other than GOV for U.S. Government personnel and agencies under § 740.11(b)(2)(ii). The list of items determined to be classified under ECCN 0B521 controls is published in Supplement No. 5 to part 774. The policies and procedures relating to ECCN 0B521 are set forth in 15 C.F.R. Section 742.6(a)(7).

0B606 Test, inspection and production ''equipment'' that is ''specially designed'' to test, inspect, produce, or develop commodities controlled by 0A606.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry.	NS Column 1, except 0B606.y.
RS applies to entire entry.	RS Column 1, except 0B606.y.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Cote d'Ivoire, Democratic Republic of Congo, Eritrea, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Sierra Leone, Somalia, or Sudan, except 0B606.y.

License Exceptions

LVS: $1500; N/A for Cote d'Ivoire, Democratic Republic of Congo, Lebanon, Liberia, Sierra Leone, or Somalia.

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 0B606.

List of Items Controlled

Unit: N/A

Related Controls: (1) See 0A606 for ground vehicles, ''parts'' and ''components.'' (2) See 0C606 for material that is ''specially designed'' for the ''development,'' or ''production'' of commodities controlled by 0A606. (3) See 0D606 for ''software'' for the ''development'', ''production'' or ''use'' of ground vehicles, ''parts'' and ''components'' controlled by 0A606. (4) See 0E606 for ''technology'' ''required'' for the ''development'', ''production'' or ''use'' of ground vehicles, ''parts'' and ''components'' controlled by 0A606. (5) Items described in 22 CFR part 121, Category VII—Tanks and Other Military Vehicles are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls. (6) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A

Items:

a. Armor plate drilling machines, other than radial drilling machines;

b. Armor plate planing machines;

c. Armor plate quenching presses; and

d. Tank turret bearing grinding machines.

e. through w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity subject to control in this ECCN or a defense article in USML Category VII.

y. Specific ''parts,'' ''components,'' ''accessories,'' ''attachments'' ''specially designed'' for a commodity subject to control in this ECCN or a defense article in USML Category VII but which have little or no military significance (see list of items controlled).

y.1. [RESERVED]

0C521 Any item subject to the EAR that is not listed elsewhere in the CCL but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons. 0C521 items are subject to RS1 controls with no license exception eligibility other than GOV for U.S. Government personnel and agencies under § 740.11(b)(2)(ii). The list of items determined to be classified under ECCN 0C521 controls is published in Supplement No. 5 to part 774. The policies and procedures relating to ECCN 0C521 are set forth in 15 CFR 742.6(a)(7).

0C606 Material that is ''specially designed'' for the ''development,'' or ''production'' of commodities controlled by 0A606.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Cote d'Ivoire, Democratic Republic of Congo, Eritrea, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Sierra Leone, Somalia, or Sudan.

License Exceptions

LVS: $1500; N/A for Cote d'Ivoire, Democratic Republic of Congo, Lebanon, Liberia, Sierra Leone, or Somalia.

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 0C606.

List of Items Controlled

Unit: N/A

Related Controls: (1) See 0A606 for ground vehicles, ''parts'' and ''components.'' (2) See 0B606 for test, inspection and production equipment that is ''specially designed'' to test, inspect, produce, or develop commodities controlled by 0A606. (3) See 0D606 for ''software'' for the ''development'', ''production'' or ''use'' of ground vehicles, ''parts'' and ''components'' controlled by 0A606. (4) See 0E606 for ''technology'' ''required'' for the ''development'', ''production'' or ''use'' of ground vehicles, ''parts'' and ''components'' controlled by 0A606. (5) Items described in 22 CFR part 121, Category VII—Tanks and Other Military Vehicles are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls. (6) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

* * * * *

0D521 Any item subject to the EAR that is not listed elsewhere in the CCL but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons. 0D521 items are subject to RS1 controls with no license exception eligibility other than GOV for U.S. Government personnel and agencies under § 740.11(b)(2)(ii). The list of items determined to be classified under ECCN 0D521 controls is published in Supplement No. 5 to part 774. The policies and procedures relating to ECCN 0D521 are set forth in 15 CFR 742.6(a)(7).

0D606 ''Software'' ''specially designed'' for the ''development,'' ''production,'' or ''use'' of ''equipment,'' ''parts'' and ''components'' controlled by 0A606.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Cote d'Ivoire, Democratic Republic of Congo, Eritrea, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Sierra Leone, Somalia, or Sudan.

License Exceptions

CIV: N/A

TSR: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any software in 0D606.

List of Items Controlled

Unit: N/A

Related Controls: (1) See 0A606 for ground vehicles, ''parts'' and ''components.'' (2) See 0B606 for test, inspection and production equipment that is ''specially designed'' to test, inspect, produce, or develop commodities controlled by 0A606. (3) See 0C606 for material that is ''specially designed'' for the ''development,'' or ''production'' of commodities controlled by 0A606. (4) See 0E606 for ''technology'' ''required'' for the ''development,'' ''production'' or ''use'' of ground vehicles, ''parts'' and ''components'' controlled by 0A606. (5) Items described in 22 CFR part 121, Category VII—Tanks and Other Military Vehicles are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls. (6) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

* * * * *

0E521 Any item subject to the EAR that is not listed elsewhere in the CCL But which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons. 0E521 items are subject to RS1 controls with no license exception eligibility other than GOV for U.S. Government personnel and agencies under § 740.11(b)(2)(ii). The list of items determined to be classified under ECCN 0E521 controls is published in Supplement No. 5 to part 774. The policies and procedures relating to ECCN 0E521 are set forth in 15 CFR 742.6(a)(7).

0E606 ''Technology'' ''required'' for the ''development,'' ''production'' or ''use'' of ''equipment,'' ''parts'' and ''components'' controlled by 0A606.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	Cote d'Ivoire, Democratic Republic of Congo, Eritrea, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Sierra Leone, Somalia, or Sudan.

License Exceptions

CIV: N/A

TSR: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any technology in 0D606.

List of Items Controlled

Unit: N/A

Related Controls: (1) See 0A606 for ground vehicles, ''parts'' and ''components''. (2) See 0B606 for test, inspection and production equipment that is ''specially designed'' to test, inspect, produce, or develop commodities controlled by 0A606. (3) See 0C606 for material that is ''specially designed'' for the ''development,'' or ''production'' of commodities controlled by 0A606. (4) See 0D606 for ''software'' for the ''development,'' ''production'' or ''use'' of ground vehicles, ''parts'' and ''components'' controlled by 0A606. (5) Items described in 22 CFR part 121, Category VII—Tanks are subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls. (6) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

43. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A018 is amended:

a. By revising the ''related controls'' paragraph in the List of Items Controlled section; and

b. By removing and reserving ''items'' paragraph (b) in the List of Items Controlled section, to read as follows:

9A018 Equipment on the Wassenaar Arrangement Munitions List.

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) Parachute systems designed for use in dropping military equipment, braking military aircraft, slowing spacecraft descent, or retarding weapons delivery; instrument flight trainers for combat simulation; military ground armed or armored vehicles and parts and components specific thereto described in 22 CFR part 121, Category VII; and all-wheel drive vehicles capable of off-road use that have been armed or armored with articles described in 22 CFR part 121, Category XIII (See § 770.2(h)—Interpretation 8) are all subject to the export licensing jurisdiction of the U.S. Department of State, Directorate of Defense Trade Controls.

(2) See 0A606.b.4 for ground transport vehicles and unarmed all-wheel drive vehicles that were classified under 9A018.b.

* * * * *

Items:

* * * * *

b. [RESERVED].

* * * * *

44. Add Supplement No. 4 to Part 774, to read as follows:

SUPPLEMENT NO. 4 TO PART 774—LISTING OF LICENSE EXCEPTION STA ELIGIBILITY DETERMINATIONS PURSUANT TO § 740.20(g) FOR ''600 SERIES'' ''END ITEMS'' ELIGIBLE FOR LICENSE EXCEPTION STA UNDER § 740.20(c)(1)

''600 series'' ''end items'' identifier by ECCN, ECCN ''items'' paragraph or other end item descriptors. Note 1: For the other end item descriptors, the descriptions of these munitions end items must match, (e.g., by model number or other equally specific descriptor), the descriptions of the end items in the RWA notices. The description does not necessarily need to be limited to a particular manufacturer. Note 2: Other end item descriptors (such as model number) will only be used in combination with the ECCN level identifier.	Date of initial approval of STA eligibility request (i.e., the date on which License Exception STA first may be used, provided the applicable terms of License Exception STA are met for the transaction).

45. Add Supplement No. 5 to Part 774, to read as follows:

SUPPLEMENT NO. 5 TO PART 774—ITEMS CLASSIFIED UNDER ECCNS 0A521, 0B521, 0C521, 0D521, AND 0E521

The following table lists items subject to the EAR that are not listed elsewhere in the CCL, but which the Department of Commerce, with the concurrence of the Departments of Defense and State, has determined warrant control for export because the items provide at least a significant military or intelligence advantage to the United States or for foreign policy reasons.

Item descriptor ..... Note: The description must match by model number or a broader descriptor that does not necessarily need to be company specific.	Date of initial or subsequent BIS classification	Date when the item will be designated EAR99, unless reclassified in another ECCN or the 0Y521 classification is re-issued.

Dated: July 12, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–17846 Filed 7–12–11; 4:15 pm]

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FEDERAL REGISTER

Vol. 76 Friday,

No. 136 July 15, 2011

Part V

The President

Executive Order 13580—Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska

Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 13580 of July 12, 2011

Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish an interagency working group to coordinate the efforts of Federal agencies responsible for overseeing the safe and responsible development of onshore and offshore energy resources and associated infrastructure in Alaska and to help reduce our dependence on foreign oil, it is hereby ordered as follows:

Section 1. *Policy.* Interagency coordination is important for the safe, responsible, and efficient development of oil and natural gas resources in Alaska, both onshore and on the Alaska Outer Continental Shelf (OCS), while protecting human health and the environment, as well as indigenous populations. A number of executive departments and agencies (agencies) are charged with ensuring that resource development projects in Alaska comply with health, safety, and environmental protection standards. To formalize and promote ongoing interagency coordination, this order establishes a high-level, interagency working group that will facilitate coordinated and efficient domestic energy development and permitting in Alaska while ensuring that all applicable standards are fully met.

Sec. 2. *Establishment.* There is established an Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska (Working Group), led by the Department of the Interior.

Sec. 3. *Membership.* (a) The Deputy Secretary of the Interior shall serve as Chair of the Working Group and coordinate its work. The Working Group shall also include deputy-level representatives or officials at the equivalent level, designated by the head of the respective agency, from:

(i) the Department of Defense;

(ii) the Department of Commerce;

(iii) the Department of Agriculture;

(iv) the Department of Energy;

(v) the Department of Homeland Security;

(vi) the Environmental Protection Agency; and

(vii) the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects.

(b) The Domestic Policy Council shall work closely with the Chair of the Working Group and assist in the interagency coordination functions described in section 4 of this order. To maximize coordination with National Security Policy Directive-66 (NSPD-66), ''Arctic Region Policy;'' Executive Order 13547 of July 19, 2010 (''Stewardship of the Ocean, Our Coasts, and the Great Lakes''); the National Response Framework; the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan); and other relevant Federal policy initiatives, the Working Group shall also include deputy-level representatives or officials at the equivalent level, designated by the head of the respective agency or office, from:

(i) the Council on Environmental Quality;

(ii) the Office of Science and Technology Policy;

(iii) the Office of Management and Budget; and

(iv) the National Security Staff.

(c) The Working Group shall consult with other agencies and offices, as appropriate, in order to facilitate the sharing of information and best practices.

(d) Members of the Working Group shall meet periodically and on a schedule coordinated with significant milestones in the various permitting cycles. Staff from the participating agencies shall meet as appropriate to facilitate the functions of the Working Group.

Sec. 4. *Functions.* Consistent with the authorities and responsibilities of participating agencies, the Working Group shall perform the following functions:

(a) facilitate orderly and efficient decisionmaking regarding the issuance of permits and conduct of environmental reviews for onshore and offshore energy development projects in Alaska;

(b) ensure that the schedules and progress of agency regulatory and permitting activities are coordinated appropriately, that they operate efficiently and effectively, and that agencies assist one another, as appropriate;

(c) facilitate the sharing of application and project information among agencies, including information regarding anticipated timelines and milestones;

(d) ensure the sharing and integrity of scientific and environmental information and cultural and traditional knowledge among agencies to support the permit evaluation process of onshore and offshore energy development projects in Alaska;

(e) engage in longterm planning and ensure coordination with the appropriate Federal entities related to such issues as oil spill prevention, preparedness and response, and the development of necessary infrastructure to adequately support energy development in Alaska;

(f) coordinate Federal engagement with States, localities, and tribal governments, as it relates to energy development and permitting issues in Alaska, including:

(i) designating a primary point of contact to facilitate coordination with the State of Alaska;

(ii) designating a primary point of contact to facilitate coordination with local communities, governments, tribes, co-management organizations, and similar Alaska Native organizations;

(g) collaborate on stakeholder outreach; and

(h) promote interagency dialogue with respect to communications with industry regarding Alaska offshore and onshore energy development and permitting issues.

Sec. 5. *General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) The Department of the Interior shall provide administrative support for the Working Group to the extent permitted by law.

(c) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

THE WHITE HOUSE,
July 12, 2011.

[FR Doc. 2011–18065
Filed 7–14–11; 11:15 am]
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H.R. 2279/P.L. 112–21

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S. 349/P.L. 112–22

To designate the facility of the United States Postal Service located at 4865 Tallmadge Road in Rootstown, Ohio, as the "Marine Sgt. Jeremy E. Murray Post Office". (June 29, 2011; 125 Stat. 236)

S. 655/P.L. 112–23

To designate the facility of the United States Postal Service located at 95 Dogwood Street in Cary, Mississippi, as the "Spencer Byrd Powers, Jr. Post Office". (June 29, 2011; 125 Stat. 237)

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