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Federal Register

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

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

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 23, and 170

RIN 3038–AC95

Registration of Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is adopting regulations under the Commodity Exchange Act (Act or CEA) that establish the process for the registration of swap dealers (SDs) and major swap participants (MSPs, and collectively with SDs, Swaps Entities) and that require Swaps Entities to become and remain members of a registered futures association (RFA). The Commission is also adopting regulations that define an ''associated person'' of an SD or MSP as a natural person and that implement the prohibition on a Swaps Entity permitting an associated person who is statutorily disqualified from registration from effecting or being involved in effecting swaps on behalf of the Swaps Entity. The Commission is adopting these regulations in accordance with section 4s of the CEA, which was recently added to the CEA by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

DATES: Effective March 19, 2012.

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, Christopher W. Cummings, Special Counsel, or Elizabeth Miller, Attorney-Advisor, Division of Swap Dealer and Intermediary Oversight, 1155 21st Street NW., Washington, DC 20581. Telephone number: (202) 418–6700 and electronic mail: *bgold@cftc.gov, ccummings@cftc.gov* or *emiller@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act.[1] Title VII of the Dodd-Frank Act[2] amended the CEA[3] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The goal of this legislation was to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of SDs and MSPs; (2) imposing clearing and trade execution requirements on standardized derivatives products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the oversight of the Commission. The regulations the Commission is adopting today concern the registration of SDs and MSPs, as required by CEA section 4s(a). As is discussed below, these final regulations are based in large part on the Commission's proposed registration regulations for SDs and MSPs (Proposal).[4]

In furtherance of the foregoing legislative goals, Dodd-Frank Act section 721(a) amended the definitions of various existing terms in the CEA and added definitions of numerous new terms to the CEA, including definitions of the new terms ''swap dealer,'' ''major swap participant,'' and ''associated person of a swap dealer or major swap participant.''[5] Section 712(d)(1) of the Dodd-Frank Act directed the Commission and the Securities and Exchange Commission (SEC), in consultation with the Board of Governors of the Federal Reserve System, to further define the terms ''swap dealer'' and ''major swap participant'' (Entities Definitional Regulations).[6] The instant rulemaking will apply to SDs and MSPs as defined in the CEA and as further defined by the Commission.

B. Statutory Registration Requirements for SDs and MSPs

CEA sections 4s(a) and 4s(b)[7] provide, in pertinent part, for the registration of SDs and MSPs as follows:

(a) REGISTRATION.—

(1) SWAP DEALERS.—It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.

(2) MAJOR SWAP PARTICIPANTS.—It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.

(b) REQUIREMENTS.—

(1) IN GENERAL.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

(2) CONTENTS.—

(A) IN GENERAL.—The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

CEA section 4s does not direct the Commission to adopt rules that provide for the registration of associated persons of SDs or MSPs. However, CEA section 4s(b)(6) makes it unlawful for a Swaps Entity to permit a person to associate with it if the person is subject to a statutory disqualification, as follows:

> Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or major swap participant to permit any person associated with a swap dealer or major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

For the purpose of the regulations it is adopting today, and specifically Regulation 23.22, the Commission

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed through the Commission's Web site, *http://www.cftc.gov/.*

[2] Pursuant to Dodd-Frank Act section 701, Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010.''

[3] 7 U.S.C. 1 *et seq.* (2006). The CEA and Commission regulations issued thereunder similarly can be accessed through the Commission's Web site.

[4] 75 FR 71379 (Nov. 23, 2010).

[5] *See,* respectively, CEA sections 1a(49), 1a(33) and 1a(4).

[6] *See* 75 FR 80174 (Dec. 21, 2010).

[7] Sections 4s(a) and 4s(b) were added to the CEA by Dodd-Frank Act section 731.

intends that, as proposed, a statutory disqualification is a disqualification under CEA section 8a(2) or 8a(3).[8] These CEA sections contain an extensive list of matters that constitute grounds pursuant to which the Commission may refuse to register a person, including, without limitation, felony convictions, commodities or securities law violations, and bars or other adverse actions taken by financial regulators.

CEA section 4s further directs the Commission to provide for the regulation of SDs and MSPs with respect to, among others, the following areas: Capital and margin, reporting and recordkeeping, daily trading records, business conduct standards, documentation standards, duties, designation of chief compliance officer,[9] and, with respect to uncleared swaps, segregation [10] (collectively, Section 4s Requirements). The Commission is addressing the Section 4s Requirements through other rulemakings (Section 4s Implementing Regulations) separate and apart from the instant rulemaking, which concerns the registration process for Swaps Entities.[11] Certain issues relevant to the Section 4s Implementing Regulations—*i.e.,* the timing of their adoption and the initial demonstration of compliance with them by SDs and MSPs—nonetheless have an impact on the registration process for Swaps Entities, which is discussed below in Part II of this **Federal Register** release.

Additionally, Dodd-Frank Act section 716 prohibits an insured depository institution (IDI) from receiving Federal assistance if it is also an SD that engages in swaps activities that are not covered by the exclusion in section 716(d).[12] Under Dodd-Frank Act section 716(c), an IDI can retain its access to Federal assistance if it transfers covered activities to a non-IDI affiliate (a Push-Out Affiliate) that is an SD or MSP, if the affiliate complies with the requirements of section 716(c), including such requirements as the Commission may establish.[13] The Push-Out Affiliate, however, would not have access to Federal assistance. The Commission did not include in the Proposal any specific Push-Out Affiliate requirements, and as it stated in the Proposal, the Commission intends that any Push-Out Affiliate that comes within the statutory definition of an SD or an MSP be subject to registration and regulation as an SD or as an MSP, as the case may be.[14]

C. The Proposal

To fulfill the statutory mandates contained in CEA sections 4s(a) and 4s(b), the Commission proposed amendments to existing Regulations 3.2, 3.4, 3.10, 3.21, 3.30, 3.31 and 3.33 [15] and new Regulations 23.21, 23.22 and 170.16, to, respectively, establish the registration process for SDs and MSPs; incorporate the statutory prohibition on SDs and MSPs permitting an associated person to effect or be involved in effecting swaps on their behalf; and require SDs and MSPs to become and remain members of an RFA.

In the section-by-section analysis of the regulations contained in the Proposal, the Commission specifically requested comment on whether it should restrict the definition of an associated person of a Swaps Entity to a natural person, and how to best implement the statutory disqualification prohibition in CEA section 4s(b)(6).[16] Elsewhere, the Commission requested comment on the concept of a provisional registration process for SDs and MSPs that would be responsive to a phased implementation of the Entities Definitional Regulations and the section 4s Implementing Regulations,[17] and on the allocation of responsibilities among the Commission and one or more RFAs attendant to the oversight of the activities of Swaps Entities generally.[18] Finally, the Commission requested comment on the application of extraterritorial issues to the registration requirements it proposed for Swaps Entities.[19]

II. Comments [20] and Responses

A. In General

The Commission received numerous comments on the Proposal. Commenters include domestic banks, foreign banks, companies engaged in various energy businesses, trade and public interest associations (energy, international banking, securities, and swaps), the National Futures Association (NFA, currently the only RFA), and both United States (U.S.) and foreign citizens. The Commission received several requests for clarification on and enhancements to its contemplated registration process for Swaps Entities, and the final regulations adopted today do contain some revisions to the Proposal. In consideration of the comments received, the Commission is adopting the Proposal mainly in the form as issued, with specific changes as discussed below.

B. Restricting Associated Persons to Natural Persons

As stated in the Proposal:

The term ''associated person'' in the context of existing Commission registrants is not defined in the CEA. That term is defined in the Commission's regulations. Specifically, Regulation 1.3(aa) provides that ''[T]his term [*i.e.,* associated person] means any *natural person* who is associated with'', *e.g.,* [a futures commission merchant] * * * in any capacity that involves solicitation or the supervision of any person or persons so engaged (emphasis added). ''Associated

[8] *See* 75 FR 71379, 71380. The Commission did not receive any comments in response to this aspect of the Proposal. *See* Part II of this **Federal Register** release, which discusses the comments the Commission received on the Proposal.

[9] CEA sections 4s(e) through (k), respectively, added to the CEA by Dodd-Frank Act section 731.

[10] CEA section 4s(*l*), added to the CEA by Dodd-Frank Act section 724(c).

[11] *See* 76 FR 23732 (Apr. 28, 2011), 76 FR 27802 (May 12, 2011) (section 4s(e)—Capital and Margin); 75 FR 76666 (Dec. 9, 2010) (section 4s(f)—Reporting and Recordkeeping, and section 4s(g)—Daily Trading Records); 75 FR 80638 (Dec. 22, 2010), 75 FR 71391 (Nov. 23, 2010) (section 4s(h)—Business Conduct Standards); 75 FR 81519 (Dec. 28, 2010), 76 FR 6708 (Feb. 8, 2011), 76 FR 6715 (Feb. 8, 2011) (section 4s(*i*)—Documentation Standards); 75 FR 71397 (Nov. 23, 2010) (section 4s(j)—Duties); 75 FR 70881 (Nov. 19, 2010) (section 4s(k)—Designation of Chief Compliance Officer); 75 FR 75162 (Dec. 2, 2010), 75 FR 75432 (Dec. 2, 2010), (section 4s(*l*)—Segregation Requirements for Uncleared Swaps).

[12] Specifically, the prohibition against Federal assistance to Swaps Entities is set forth in Dodd-Frank Act section 716(a), as follows:

(a) PROHIBITION ON FEDERAL ASSISTANCE.—Notwithstanding any other provision of law (including regulations), no Federal assistance may be provided to any swaps entity with respect to any swap, security-based swap, or other activity of the swaps entity.

Dodd-Frank Act section 716(d) carves out certain swaps activities of an IDI that is an SD, and therefore a ''swaps entity,'' from the prohibition against ''Federal assistance.'' In particular, the prohibition against Federal assistance does not apply to the extent the IDI SD engages in: (1) Hedging and other risk-mitigating activities of the IDI; or (2) acting as an SD for swaps and security-based swaps involving rates (*e.g.,* interest rate swaps) or reference assets that are permissible investments. Engaging in non-cleared credit default swaps, however, would subject an IDI SD to the prohibition against Federal assistance.

[13] Section 716(c) provides for the Push-Out Affiliate exception as follows:

(c) AFFILIATES OF INSURED DEPOSITORY INSTITUTIONS.—The prohibition on Federal assistance contained in subsection (a) does not apply to and shall not prevent an insured depository institution from having or establishing an affiliate which is a swaps entity, as long as such insured depository institution is part of a bank holding company, or savings and loan holding company, that is supervised by the Federal Reserve and such swaps entity affiliate complies with sections 23A and 23B of the Federal Reserve Act and such other requirements as the Commodity Futures Trading Commission * * * may determine to be necessary and appropriate.

[14] *See* 75 FR 71379, 71380–81. The Commission did not receive any comments on its statement in the Proposal.

[15] Part 3 of the Commission's regulations governs the registration of intermediaries and certain market participants under the CEA.

[16] *See* 75 FR at 71385.

[17] *See* 75 FR at 71381.

[18] *See* 75 FR at 71381–82.

[19] *See* 75 FR at 71382–71383.

[20] The comments the Commission received on the Proposal are currently available on the Commission's Web site.

person'' has typically referred to a salesperson of a registrant. Thus, a corporation, partnership or other legal entity has never been considered an associated person. The use of the term ''natural person'' in the current associated person definition is intended to distinguish between the rights and responsibilities of persons acting as associated persons of a registrant and persons acting as IBs. However, in the absence of any language in the Dodd-Frank Act restricting associated persons of swaps entities to natural persons, the Commission is not proposing such a definition. The Commission nonetheless requests comment on whether it should by regulation in fact restrict associated persons of swaps entities to natural persons.[21]

The comments the Commission received in response to this request were unanimous in their support of such a restriction. The Commission is amending Regulation 1.3(aa) to include in the ''associated person'' definition provided for thereunder a natural person associated with an SD or MSP as a partner, officer, employee or agent (or functionally similar role) in a capacity that involves the solicitation or acceptance of swaps, or the supervision of persons so engaged. Specifically, this definition is now found in new Regulation 1.3(aa)(6).[22]

C. Effect of Statutory Disqualification

The Commission proposed the adoption of new Regulation 23.22 to implement the statutory prohibition in CEA section 4s(b)(6) against an SD or MSP permitting a person associated with it who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the SD or MSP, if the SD or MSP ''knows, or in the exercise of reasonable care should know, of the statutory disqualification.'' In the proposed regulation, paragraph (a) defined the term ''person'' as a shorthand substitute for the statutory term ''associated person of a swap dealer or major swap participant,'' and paragraph (b) restated the statutory prohibition without exception. The Commission proposed that an SD or MSP would be responsible for ensuring that its associated persons are not subject to a statutory disqualification. The Commission also requested comment on implementing the statutory prohibition.

The Commission in its request focused on how an SD or MSP could conduct background checks or otherwise fulfill the requirement to ensure that persons subject to a statutory disqualification would not effect or be involved in effecting swaps on its behalf. The sole comment that the Commission received on this issue expressed the view that the Commission allow, but not require, Swaps Entities to use NFA for this vetting purpose.[23] The Commission agrees with this comment. It believes that Swaps Entities should be free to work with and through the service provider of their choice to obtain information as to whether a prospective associated person is subject to a statutory disqualification—and NFA could qualify to be such a service provider. Accordingly, the Commission has not adopted any requirement that Swaps Entities must, and may only, employ NFA to fulfill their obligation under CEA section 4s(b)(6). This same commenter suggested that if NFA performed the background check, ''then it would constitute a safe harbor for the firm if the individual is subject to a statutory disqualification but NFA previously notified the firm that the person is not subject to one.'' The Commission is not authorizing such a safe harbor.

One commenter on the implementation of the statutory prohibition[24] recommended that, contrary to the Proposal, the Commission adopt an exception to the association prohibition in Regulation 23.22(b) for any person listed as a principal or registered as an associated person of a futures commission merchant (FCM), retail foreign exchange dealer (RFED), introducing broker (IB), commodity pool operator (CPO), or commodity trading advisor (CTA)—notwithstanding that such person may be subject to a statutory disqualification under CEA section 8a(2) or 8a(3).[25] This commenter noted that, pursuant to the authority the Commission has delegated to NFA to exercise its registration responsibilities in the futures markets, NFA has permitted a person to be listed as a principal or registered as an associated person where NFA, in its discretion, has determined that the incident giving rise to a statutory disqualification is insufficiently serious, recent, or otherwise relevant to evaluating the person's fitness. Where this has occurred and the person now finds himself to be an associated person of an SD or MSP, the commenter explained that absent an exception as provided for in the introductory text of CEA section 4s(b)(6), an anomalous result would ensue.

The statutory prohibition in CEA section 4s(b)(6) applies ''except to the extent otherwise specifically provided by rule, regulation, or order.'' The Commission recognizes that if it did not provide an exception as suggested, a person could be permitted to direct futures-related activities or solicit futures-related business with members of the retail public—*e.g.,* as, respectively, a principal or associated person of an FCM or CPO—but that same person would be barred from soliciting, accepting, or otherwise effecting or being involved in effecting swaps transactions with significantly more sophisticated clients as an associated person of an SD or MSP. On the other hand, adopting the requested exception could result in persons to whom the Dodd-Frank Act affords heightened protections engaging in transactions marketed by associated persons of an SD or MSP subject to a statutory disqualification. Even though the Commission did not propose such an exception, it believes that the commenter's recommendation has merit. The Commission therefore is adopting the commenter's recommendation that Regulation 23.22(b) include both the general prohibition against an SD or MSP permitting any person associated with it who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the SD or MSP and an exception to the prohibition for any person subject to a statutory disqualification who is already listed as a principal, registered as an associated person of another registrant (*i.e.,* an FCM, RFED, IB, CPO, CTA, or leverage transaction merchant (LTM)), or registered as a floor broker (FB) or floor trader (FT).[26]

[21] 75 FR at 71385 (footnote omitted).

[22] This action supersedes the prior proposal of the Commission to define the term ''associated person of a swap dealer or major swap participant'' in a new Regulation 1.3(zz). *See* 76 FR 33066, 33067 (June 7, 2011). However, for the purpose of adding the ''Exemption from fingerprinting requirement in certain cases'' provided for in Regulation 3.21(c) with respect to outside directors of an applicant for registration as an SD or MSP, the Commission has employed the term ''transactions involving 'commodity interests,' as that term is defined in § 1.3(yy)''—which regulation the Commission has proposed to revise to include ''[a]ny swap as defined in the Act, the Commission's regulations, a Commission order or interpretation, or a joint interpretation or order issued by the Commission and the Securities and Exchange Commission.'' *See* 76 FR at 33069, 33086.

[23] Comment letter from the National Futures Association (Jan. 24, 2011) (NFA Comment Letter).

[24] *Id.*

[25] *See, e.g.,* CEA section 4k, which requires the registration of associated persons of FCMs, IBs, CPOs, and CTAs, and Regulation 3.10(a)(2), which requires each natural person who is a principal of an applicant for registration to file a fingerprint card.

[26] In addition to the registration categories included in the comment, the Commission has included in this exception any person listed as a principal or registered as an associated person of an LTM. Although there currently is no registered LTM, the CEA and Commission regulations issued thereunder provide for an LTM registration

Continued

The same commenter also recommended that the Commission expand Regulation 3.12(f), or adopt a new regulation, ''to address the situations in which an individual conducts swaps-related activity on behalf of more than one Swap Entity or conducts swaps activity on behalf of a Swap Entity and is also registered as an AP of a different firm.'' [27] Regulation 3.12(f) currently provides for the reporting of dual and multiple associations of a person registered as an associated person with, and sponsored by, two or more Commission registrants. It provides, among other things, that each sponsor registrant is jointly and severally liable for the conduct of that associated person in specified circumstances. While the Commission agrees with the commenter's recommendation, it anticipates promptly addressing this issue in a future rulemaking.

D. Phased Implementation [28]

The Commission proposed a provisional registration process for SDs and MSPs that would take into account, through phased implementation, the strong likelihood that the Commission would adopt the Section 4s Implementing Regulations subsequent to issuing the registration process regulations for SDs and MSPs. As the Commission explained in the Proposal, phased implementation is aimed at preserving the ''continuity of the business operations of existing swaps entities, and to avoid undue market disruption,'' by permitting applicants to continue swaps activities pending confirmation of initial compliance with the Section 4s Implementing Regulations and notification of registration. In addition, the final regulations make clear that provisional registration will be granted upon filing of the application and any documentation required under the applicable Section 4s Implementing Regulation—and not upon NFA's review and approval of the documentation.

Several commenters stressed the need for phased implementation over extended periods of time so that SDs and MSPs can come into compliance after evaluating the need, *e.g.,* to restructure operations, re-document client agreements as a result of new organizational structures or new regulatory requirements, or upgrade systems. One commenter recommended that the Commission postpone the effective date of the registration process rulemaking until sometime after the Commission had adopted all of the Section 4s Implementing Regulations.[29] Another commenter opined that, owing to business continuity concerns, a reasonable transition period for a firm not previously subject to regulation would be ''a one year period for such firm to (i) determine whether it is [an SD or MSP] and (ii) register with the Commission.'' [30] It suggested a ''roll off'' period that would enable a putative Swaps Entity to fall outside the SD or MSP definition and thus not be subject to the requirement to register as an SD or MSP if enough of the Swaps Entity's legacy swaps expired. The commenter also estimated ''that it might take up to as much as two years in addition to the suggested one year registration period for such firms to complete the steps necessary to comply with all of the requirements necessary for registration as [an SD or MSP].''

The Commission believes that the provisional registration process adopted today is consistent with the incremental staging requested by commenters. Thus, the Commission is declining to extend the effectiveness of any Section 4s Implementing Regulation today. Moreover, to provide the maximum amount of processing time, so that applicants for SD or MSP registration can be registered at the earliest possible date, and in the absence of any comments to the contrary, the Commission has adopted, as proposed, Regulation 3.10(a)(1)(v), which permits applicants to begin the registration process in advance of the effective date of the requirement to register as an SD or MSP.[31]

In the Proposal, the Commission provided for provisional registration with reference to the Dodd-Frank Act's general statutory effective date of July 16, 2011, and CEA section 4s(b), which requires the Commission to issue regulations providing for the registration of Swaps Entities not later than one year after the enactment of the Dodd-Frank Act, or July 21, 2011. After issuing the Proposal, the Commission issued effective date clarification of, as well as specific exemptive relief from compliance with, numerous provisions of the Dodd-Frank Act (Effective Date Release).[32] The Effective Date Release explained that many Dodd-Frank Act provisions require rulemakings to implement them, including the registration mandate in CEA section 4s(a) and other Section 4s Requirements, and that pursuant to Dodd-Frank Act section 754, those provisions would not be effective until 60 days after the publication of those implementing final regulations (*e.g.,* for the registration mandate, this **Federal Register** release). Dates notwithstanding, for the reasons stated in the Proposal and above, the Commission continues to believe that provisional registration is appropriate and consistent with the Effective Date Release.[33]

Moreover, in response to a commenter requesting clarification on provisional registration [34] and as is reflected in the amended heading of Regulation 3.2—which now reads ''Registration processing by the National Futures Association; notification and duration of registration; *provisional registration''* (emphasis supplied)—the Commission has adopted in new Regulation 3.2(c)(3) the exact terms pursuant to which NFA will notify an applicant for SD or MSP registration that it is provisionally registered, the continuing obligations of a provisional registrant with respect to providing documentation of compliance with each Section 4s Implementing

category. The Commission also has included in this exception any person registered as an FB or FT because, as a natural person and like an associated person of a registrant other than an SD or MSP, it must submit a Form 8–R in connection with applying for registration.

[27] NFA Comment Letter.

[28] *See generally* 75 FR at 71379, 71381.

[29] Comment letter from the International Swaps and Derivatives Association, Inc. (Jan. 24, 2011) (ISDA Comment Letter). Another commenter advocated delaying effectiveness of the Section 4s Implementing Regulations until at least 60 days after the registration process regulations and the Entities Definitional Regulations became effective. Comment letter from the Securities Industry and Financial Markets Association (Jan. 18, 2011) (SIFMA Comment Letter).

[30] Comment letter from Hunton and Williams, LLP, on behalf of the Working Group of Commercial Energy Firms (Jan. 24, 2011) (WGCEF Comment Letter).

[31] In response to a comment received, the Commission has clarified in Regulation 3.10(a)(1)(v)(C)(*1*) when a person may apply to be registered as an SD or MSP and in Regulations 3.10(a)(1)(v)(C)(*2*) and 3.10(a)(1)(v)(C)(*3*) when a person must apply to be registered as an SM or MSP. *See* NFA Comment Letter.

[32] *See* 76 FR 42508, 42509 and 42524 (July 19, 2011).

[33] So that the text of the registration regulations accurately reflects the impact of the Effective Date Release on phased implementation and the provisional registration process, the Commission is adopting certain definitions, and is incorporating those definitions into the registration process regulations it is adopting today. Specifically, new Regulation 3.1(f) defines the term ''Section 4s Implementing Regulation'' to mean ''a regulation the Commission issues pursuant to section 4s(e), 4s(f), 4s(h), 4s(*i*), 4s(j), 4s(k), or 4s(*l*) of the Act,'' and new Regulation 3.1(g) defines the term ''Swap Definitional Regulation'' to mean ''a regulation the Commission issues to further define the term 'swap dealer,' 'major swap participant' or 'swap' in section 1a(49), 1a(33) or 1a(47) of the Act, respectively, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' These terms are employed in such registration process regulations as Regulation 3.2(c)(3)(i) (pertaining to provisional registration) and 3.10(a)(1)(v) (pertaining to applying for registration as an SD or MSP).

[34] NFA Comment Letter.

Regulation,[35] and the terms pursuant to which a provisional registrant will become registered with the Commission. The Commission believes this clarification provides necessary specific details on provisional registration and the transition of a provisional registrant into a registered SD or MSP.

The Commission proposed in Regulation 3.2(c)(3) to require NFA to notify the applicant for SD or MSP registration ''that it is provisionally registered pending completion of a fitness review by the National Futures Association.'' [36] However, in light of the purpose of provisional registration, along with the authority the Commission today intends to delegate to NFA by notice and order (Notice and Order)—*e.g.,* the authority to conduct proceedings to deny the registration of an applicant for registration as an SD or MSP—the Commission has determined not to adopt any such delay with respect to the notification by NFA to the applicant that it is provisionally registered.

As proposed and as adopted, Regulation 3.10(a)(1)(i) provides that application for registration as an SD or MSP will commence with the filing of a Form 7–R with NFA—which is also how, under Regulation 3.10(a)(1)(i), the registration process commences for applicants for registration as an FCM, RFED, IB, CPO, CTA, or LTM.[37] In this regard, the Commission notes that, as proposed, Regulation 3.10(a)(1)(v)(B) provides that the commencement of the registration process by an SD or MSP authorizes the Commission to conduct on-site inspection of the applicant to determine compliance with the Section 4s Implementing Regulations applicable to it. The Commission received no comment on the inspection authority proposed in Regulation 3.10(a)(1)(v)(B).

The Commission also proposed to require applicants for registration as an SD or MSP ''to demonstrate compliance'' with such of the Section 4s Implementing Regulations in effect at the time of their application. At the suggestion of a commenter, the Commission has adopted in Regulation 3.10(a)(1)(v)(A) the requirement that the Form 7–R must be accompanied by ''such documentation as may be required to demonstrate compliance'' with each applicable Section 4s Implementing Regulation.[38] The Commission believes that the addition of this phrase brings the registration application requirement for SDs and MSPs in line with existing requirements for applicants for registration in other categories—such as applicants for registration as an FCM or IB, who must accompany their Form 7–R with specified documentation that demonstrates their compliance with the financial requirements they must meet to become registered.[39] And, as proposed and as adopted, Regulation 3.10(a)(1)(v)(A) provides that for the purpose of this regulation, ''the term 'compliance' includes the term 'the ability to comply,' to the extent that a particular Section 4s Implementing Regulation may require demonstration of the ability to comply with a requirement thereunder.'' [40]

Two commenters asked the Commission what documentation is required of an applicant for SD or MSP registration.[41] One of these commenters suggested that the documentation required to demonstrate compliance with the regulations the Commission adopts to implement the business conduct standards required by CEA section 4s(h) might consist of written policies and procedures.[42] Or, as the Commission notes, the documentation required to demonstrate compliance with the regulations the Commission adopts to implement the capital requirements of CEA section 4s(e) might be a financial form specifically designed for this purpose. The Commission anticipates that these questions will be considered in connection with its adoption of the relevant Section 4s Implementing Regulations.

The regulations the Commission proposed and is adopting also address, in Regulation 3.10(a)(1)(v)(D)(*1*), the situation where an applicant for registration as an SD or MSP to whom NFA has provided notification of provisional registration subsequently fails to demonstrate compliance with a Section 4s Implementing Regulation—*i.e.,* that NFA ''will notify the applicant that its application is deficient, whereupon the applicant must withdraw its registration application, it must not engage in any new activity as a swap dealer or major swap participant, as the case may be, and the applicant shall cease to be provisionally registered.'' [43] The Commission proposed a 30-day period—subject to extension at the discretion of the Commission—within which the applicant would be required to cure the deficiency. Upon further consideration, the Commission has adopted in the final regulation a 90-day cure period.[44] Further, Regulation 3.10(a)(1)(v)(D)(*2*) makes clear that the provisions of Regulation 3.10(a)(1)(v)(D)(*1*) supplement, and are in addition to, the other activities in which NFA engages under the Act and Commission regulations in connection with processing an application for registration as an SD or MSP.[45]

[35] *See also* Regulation 3.10(a)(1)(v)(D).

[36] *See* 75 FR at 71387.

[37] The process for registration as an FB or FT commences with the filing of a Form 8–R, which reflects the fact that FBs and FTs are natural persons.

Further with respect to Regulation 3.10, the Commission notes that paragraphs (a)(1)(iii) and (a)(1)(iv) were inadvertently dropped from the regulation in connection with the adoption of the regulatory program of the Commission for RFEDs. *See* 75 FR 55410, 55424 (Sep. 10, 2010). By this **Federal Register** release, the Commission is returning paragraphs (a)(1)(iii) and (a)(1)(iv) to Regulation 3.10 in the form and text identical to that which existed prior to this unintentional deletion.

[38] NFA Comment Letter.

[39] *See* Regulation 3.10(a)(1)(ii), which requires applicants for registration as an FCM or IB to accompany their Form 7–R with a Form 1–FR–FCM or Form 1–FR–IB, respectively.

[40] As the Commission has stated previously, it ''will strive to ensure that current practices will not be unduly disrupted during the transition to the new regulatory regime.'' Effective Date for Swap Regulation, 76 FR 42508, 42513 (July 19, 2011). Further, the Commission has determined that ''the interdependencies of the various rulemakings will be a consideration in determining the implementation date for each final rule,'' and that such determinations will be informed by the Commission's further consideration of these issues, including public comments. *Id.*

Thus, for example, to determine with which Section 4s Implementing Regulations an applicant must demonstrate compliance as part of the registration process, the applicant should look to the Section 4s Implementing Regulations themselves to determine precisely when compliance is required for each. For example, the Section 4s Implementing Regulations for External Business Conduct Standards require compliance on the later of 180 days after the effective date of those regulations or the date on which swap dealers or major swap participants are required to apply for registration pursuant to Regulation 3.10.

[41] NFA and WGCEF Comment Letters.

[42] NFA Comment Letter.

[43] This provision was found in proposed Regulation 3.10(a)(1)(v)(D)(*2*).

[44] New Regulation 3.10(a)(1)(v)(E), formerly proposed Regulation 3.10(a)(1)(v)(D)(*3*), addresses the effect on the applicable swap documentation of the SD or MSP. Broadly stated, as proposed and as adopted, this regulation provides that ''unless specifically reserved in the applicable swap documentation,'' any withdrawal, cessation or revocation of registration does not affect the terms of any swap transaction to which the applicant is a party entered into prior to receiving notice that it is deficient in its compliance with the applicable Section 4s Implementing Regulation. *See* CEA section 22(a)(5), added by Dodd-Frank Act section 739, which states:

EFFECT ON SWAPS.—Unless specifically reserved in the applicable swap, neither the enactment of the Wall Street Transparency and Accountability Act of 2010, nor any requirement under that Act or an amendment made by that Act, shall constitute a termination event, force majeure, illegality, increased costs, regulatory change, or similar event under a swap (including any related credit support arrangement) that would permit a party to terminate, renegotiate, modify, amend, or supplement 1 or more transactions under the swap.

[45] *See, e.g.,* CEA sections 8a(2) and 8a(3) and *generally* Part 3 of the Commission's regulations.

To address comments requesting clarification of the effect of provisional registration on the general registration process for SDs and MSPs,[46] the Commission notes that, as is stated in Part II.E below, the Commission intends to issue the Notice and Order that delegates to NFA the authority to perform the full range of registration functions with respect to applicants for registration, and persons registered, as an SD or MSP. Currently, persons who apply for registration must file a Form 7–R, and a Form 8–R and fingerprint card for each principal of the applicant who is a natural person,[47] accompanied by such documentation as may be required to demonstrate compliance with applicable regulatory requirements. NFA subsequently reviews these materials in advance of granting registration.[48] This, then, is the course of action the Commission intends that NFA will follow upon notification to an applicant for registration as an SD or MSP that it is provisionally registered.

In this regard, the Commission expects that NFA will promptly perform these reviews and, as the Commission intends to state in the Notice and Order, NFA will be required to perform these registration processing functions in accordance with the standards established by the CEA and the Commission's regulations and to follow the same procedures with respect to recordkeeping, disclosure and tracking of fitness investigations and adverse action proceedings concerning SDs and MSPs as it must follow in cases involving other registrants. Thus, for example, notwithstanding that it has notified an applicant for registration as an SD or MSP that it is provisionally registered, NFA may subsequently take an action to deny the registration application based on the statutory disqualification of one of the applicant's principals.[49] In this regard, the Commission notes that the Form 7–R specifies disclosures that must be made concerning an applicant's criminal, regulatory and disciplinary histories, and that Form 8–R additionally requires these disclosures for each of the applicant's principals.[50]

Another commenter requested that the Commission consider separate sets of regulations for SDs and MSPs.[51] The Commission has considered the reasons set forth in the comment and continues to believe that applicants for SD or MSP registration should be subject to the same registration requirements for the purpose of commencing the registration process—*i.e.,* the filing of the Form 7–R by the applicant.

E. Allocation of Responsibilities[52] *and RFA Membership and Oversight*[53]

As part of its efforts to bring SDs and MSPs into the existing regulatory framework for futures intermediaries, the Commission proposed Regulation 170.16, which would require each person registered as an SD or MSP to become and remain a member of an RFA. As the Commission noted, FCMs are subject to the RFA membership requirement.[54] Currently, NFA is the sole RFA. The Commission received general comments in favor of the membership requirement, that claimed such a requirement would provide the Commission with flexibility in overseeing the operations and activities of Swaps Entities.[55] After consideration of the foregoing, the Commission is adopting Regulation 170.16 as proposed.

The Commission also requested comment on who should be responsible for determining initial and ongoing compliance by Swaps Entities with respect to the Section 4s Implementing Regulations and all other applicable requirements. The Commission suggested three alternatives: no delegation to any person, full delegation to NFA (or any association that may be subsequently registered as a futures association), and partial delegation to NFA (or any subsequent RFA).[56]

One commenter favored no delegation, arguing that ''[t]he fundamental duty to determine initial and continuing compliance to qualify for registration is entrusted to and must remain with the CFTC.'' [57] This commenter nevertheless acknowledged that confirmation and oversight of compliance with functions involving reporting and recordkeeping, daily trading records, swap documentation structure, designation of chief compliance officer, and filing of annual compliance reports could be delegated to NFA if the Commission determined that ''material efficiencies'' could be achieved. But, confirmation and oversight of compliance with requirements relating to, among other functions, capital and margin requirements, business conduct standards and monitoring of trading and risk management were viewed by this commenter as requiring ''involvement that is focused, decisive and utterly free from *even the appearance* of influence brought to bear by SDs and MSPs''—and therefore, this commenter claimed, should be retained by the Commission.[58] Another commenter observed that until the enactment of the Dodd-Frank Act, NFA had been the self-regulatory organization (SRO) for the futures industry exclusively, and advanced that NFA would need to develop new capabilities to serve as an effective SRO for the swaps industry.[59] Other commenters favored full delegation to NFA, based on NFA's historical performance of the registration and fitness review functions, as well as confirming its members' compliance with regulatory requirements.[60]

Another commenter requested that if the Commission adopted the partial delegation model, it clearly define the responsibilities delegated to NFA, and, in this regard, asked that the Commission clarify certain of its registration process proposals.[61] It recommended that ''the Commission delegate to NFA not only the authority to process Swap[s] Entity registration applications and conduct background checks but also to conduct adverse registration proceedings.'' This

[46] NFA Comment Letter.

[47] Regulation 3.1 defines the term ''principal'' to mean, when referring to an applicant for registration, a registrant or a person required to be registered under the CEA or Commission regulations, to include officers, directors, and persons who own ten percent or more of the outstanding shares of the applicant or registrant.

[48] For example, this is the procedure that NFA follows with respect to applicants for registration as an FCM or IB, who must file a Form 7–R, a Form 8–R for each natural person principal, and specified financial documents.

[49] *See* CEA sections 8a(2) and 8a(3).

[50] These forms can be accessed through NFA's Web site, *http://www.nfa.futures.org/.*

[51] SIFMA Comment Letter.

[52] *See generally* 75 FR 71379 at 71381–82.

[53] *See generally* 75 FR at 71385.

[54] *Id.*

[55] Comment letter from the New England Fuel Institute and the Petroleum Marketers Association of America (Jan. 18, 2011) (NEFI/PMAA Comment Letter).

[56] The Proposal specifically provided:

Option number one would involve the Commission being directly responsible for ensuring compliance by swaps entities with all requirements applicable to them under the CEA and Commission regulations. Option number two would involve NFA (or any other association that may subsequently be registered as a futures association) being responsible for ensuring compliance, subject to Commission oversight. Option number three would involve certain compliance oversight activities being performed by the Commission and others being delegated to NFA (or a subsequently registered futures association). The Commission requests comment on these options. In the case of option number three, commenters should specify which oversight activities should be performed by the Commission and which should be delegated to, or performed by NFA (or another registered futures association).

75 FR at 71382.

[57] Comment letter from Better Markets, Inc. (Jan. 24, 2011) (Better Markets Comment Letter).

[58] *Id.* (emphasis in original).

[59] ISDA Comment Letter.

[60] NFA and WGCEF Comment Letters.

[61] NFA Comment Letter.

commenter further requested that, in delegating ''to NFA the responsibility to maintain records associated with processing Swap Entity registration applications * * * the Commission specify whether records filed with and maintained by NFA in connection with any background check * * * are considered Commission records.''

In response to these comments, in recognition of NFA's proven track record in performing analogous functions for all other Commission registrants, and consistent with past practice,[62] including with respect to the newest registrant category of RFED, the Commission intends to delegate its full registration authority under the CEA and its regulations to NFA with respect to applicants for registration, and registrants, as an SD or MSP. Specifically, by the Notice and Order, the Commission intends to delegate to NFA the authority to take the following actions: (1) To process and grant applications for registration and withdrawals from registration of SDs and MSPs, and to notify applicants for registration as an SD or MSP of provisional registration; (2) in connection with processing and granting applications for registration of SDs and MSPs, to confirm initial compliance with applicable Section 4s Implementing Regulations;[63] (3) to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any SD or MSP or of any applicant for registration in either category; and (4) to maintain records regarding SDs and MSPs, and to serve as the official custodian of those Commission records.[64] The Commission intends that the Notice and Order will further provide that nothing contained therein ''shall affect the Commission's authority to review the performance by NFA of Commission registration functions, to adopt and enforce regulations applicable to SDs and MSPs as Commission registrants, and to conduct on-site examinations of the operations and activities of SDs and MSPs as Commission registrants.''

The Commission recognizes that the operations, activities and transactions engaged in by SDs and MSPs have not previously been subject to an extensive regulatory framework. Ideally, and as one commenter suggested, the Commission would retain direct responsibility, at least initially, for confirming compliance with the Section 4s Implementing Regulations.[65] However, in order to best allocate its resources, the Commission has determined to delegate to NFA the responsibility for the initial determination that an applicant for registration as an SD or MSP is in compliance with the Section 4s Implementing Regulations.

Going forward, the Commission expects that NFA, as it has for its other members in connection with the discharge of its RFA responsibilities under CEA section 17, will adopt rules for its SD and MSP members that are the same as, or more stringent than, the Section 4s Implementing Regulations, and that NFA will engage in active oversight of its SD and MSP members to monitor and ensure compliance with those rules.[66] In this regard, the Commission notes that CEA section 17(j) requires an RFA—such as NFA—to submit to the Commission any new change in or addition to its rules and that the RFA—

> may make such rules effective ten days after receipt of such submission by the Commission unless, within the ten-day period, the registered futures association requests review and approval thereof by the Commission or the Commission notifies such registered futures association in writing of its determination to review such rules for approval.

As for the standard of review to which RFA rules are subject, section 17(j) further provides that:

> The Commission shall approve such rules if such rules are determined by the Commission to be consistent with the requirements of this section and not otherwise in violation of this Act or the regulations issued pursuant to this Act, and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be inconsistent with the requirements of this section or in violation of this Act or the regulations issued pursuant to this Act.[67]

However, and consistent with the Notice and Order the Commission intends to issue, adoption by the Commission of Regulation 170.16 requiring membership in an RFA by SD and MSP registrants and adoption by NFA of rules for its SD and MSP members does not affect the authority of the Commission to adopt and enforce regulations applicable to SDs and MSPs as Commission registrants and to conduct on-site examinations of the operations and activities of SDs and MSPs as Commission registrants.

The Commission has, in the past, issued written guidance to NFA regarding the exercise of delegated authority.[68] To the extent that a Section 4s Implementing Regulation is not specific in this regard, the Commission anticipates providing written guidance to NFA on the criteria for, and manner of, determining that an applicant for SD or MSP registration has demonstrated its initial compliance with the regulation.

F. Extraterritoriality

As is noted above, in the Proposal, the Commission requested comment on the extraterritorial application of the SD and MSP registration requirements. The Commission has determined to limit this final rulemaking to the process of registration. Issues relating to which

[62] The Commission previously has authorized NFA to perform the full range of registration functions with regard to persons who must register under the CEA, including granting applications for registration; enabling withdrawals; and conducting proceedings to deny, condition, suspend, restrict or revoke the registration of existing registrants or applicants for registration in each category. *See* 48 FR 15940 (Apr. 13, 1983); 48 FR 35158 (Aug. 3, 1983); 48 FR 51809 (Nov. 14, 1983); 49 FR 8226 (Mar. 5, 1984); 49 FR 39593 (Oct. 9, 1984); 50 FR 34885 (Aug. 28, 1985); and 75 FR 55310 (Sep. 10, 2010).

[63] The Commission intends that applicants for registration may seek confidential treatment of documentation submitted to demonstrate initial compliance with the Section 4s Implementing Regulations in accordance with the procedures set out in Regulation 145.9. This approach is consistent with that taken in other Dodd-Frank Act rulemakings. *See, e.g.,* Process for Review of Swaps for Mandatory Clearing, 76 FR 44464, 44474 (July 26, 2011) (adopting Regulation 39.5(b)(5) which allows a derivatives clearing organization to request confidential treatment under Regulation 145.9 for portions of its submissions to the Commission).

[64] The Commission has adopted as proposed an amendment to Regulation 3.10(d) that subjects SD and MSP registrants to the requirement applicable to all other persons registered in accordance with Regulation 3.10 to annually review and update registration information with NFA. However, in light of its intent to delegate its full registration authority to NFA, the Commission has not adopted as proposed a further amendment to Regulation 3.10(d) that would have required SD and MSP registrants to also file this updating registration information with the Commission.

[65] Better Markets Comment Letter.

[66] *See, e.g.,* NFA Compliance Rule 2–13 for its member CPOs and CTAs, wherein NFA has adopted in large part the Part 4 regulations of the Commission, which govern the operations and activities of these categories of registrant. *See also* NFA Financial Requirements Rules for its member FCMs, RFEDs and IBs, whereby NFA has adopted rules that are the same as, or more stringent than, the financial requirements the Commission has adopted for these categories of registrant.

[67] Section 17(j) further provides:

> If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such longer period of time as the [RFA] may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the [RFA] may agree to, such rule may be made effective by the [RFA] until such time as the Commission disapproves such rule * * *.

[68] *See* Letter to Robert K. Wilmouth, President, NFA, from Jean A. Webb, Secretary of the Commission, dated Dec. 4, 1997; Letter to Robert K. Wilmouth, President, NFA, from Jean A. Webb, Secretary of the Commission, dated Apr. 13, 2000. These letters are included in Appendix A to Part 3 of the Commission's regulations.

entities are SDs or MSPs and the substantive requirements applicable to them, including the extraterritorial application of such substantive requirements, are beyond the scope of this rulemaking.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (Reg Flex Act) requires federal agencies to consider the impact of its rules on ''small entities.'' [69] A regulatory flexibility analysis or certification typically is required for ''any rule for which the agency publishes a general notice of proposed rulemaking pursuant to'' the notice-and-comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b).[70] As the Commission stated in the Proposal, it previously has established that certain entities subject to its jurisdiction are not small entities for purposes of complying with the Reg Flex Act. However, as the Commission also noted in the Proposal, SDs and MSPs are new categories of registrant for which the Commission had not previously addressed the question of whether such persons are small entities.[71]

In this regard, the Commission explained in the Proposal that it previously had determined that FCMs should not be considered to be small entities for purposes of the Reg Flex Act, based, in part, upon FCMs' obligation to meet the minimum financial requirements established by the Commission to enhance the protection of customers' segregated funds and protect the financial condition of FCMs generally.[72] Like FCMs, SDs will be subject to minimum capital requirements, and are expected to be comprised of large firms. The Commission is statutorily required to exempt from designation as an SD those entities that engage in a *de minimis* quantity of swap dealing in connection with transactions with or on behalf of customers.[73] Accordingly, for purposes of the Reg Flex Act for the Proposal and future rulemakings, the Commission proposed that SDs should not be considered small entities for essentially the same reasons that it had previously determined FCMs not to be small entities.[74]

The Commission further explained that it had also previously determined that large traders are not small entities for Reg Flex Act purposes, with the Commission considering the size of a trader's position to be the only appropriate test for the purpose of large trader reporting.[75] The Commission then noted that ''MSPs maintain substantial positions in swaps, creating substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.'' [76] Accordingly, for purposes of the Reg Flex Act for the Proposal and future rulemakings, the Commission also proposed that MSPs should not be considered to be small entities for essentially the same reasons that it previously had determined large traders not to be small entities.[77]

In response to the Proposal, one commenter, representing a number of market participants, submitted a comment related to the Reg Flex Act, stating that ''[e]ach of the complex and interrelated regulations currently being proposed by the Commission has both an individual, and a cumulative, effect on [certain] small entities,'' and that ''the vast majority of [our] members meet the definition of 'small entities' under the Small Business Regulatory Enforcement Fairness Act.''.[78] Thus, the commenter concluded that the Commission should conduct a regulatory flexibility analysis for each of its rulemakings under the Dodd-Frank Act, including this rulemaking applicable to the registration process for Swaps Entities.

This commenter did not provide any information on how the Proposal may have a significant economic effect on a substantial number of small entities. Nonetheless, the Commission has reevaluated this rulemaking in light of the statements made to it by this commenter. After further consideration of those statements, the Commission has again determined that this final rulemaking, which is applicable to SDs and MSPs, will not have a significant economic effect on a substantial number of small businesses.

In terms of affecting a substantial number of small entities, as is noted above, the Commission is statutorily required to exempt from designation as an SD those entities that engage in a *de minimis* quantity of swaps dealing. Thus, these exempted entities will not be required to register as an SD. Moreover, the Commission does not expect that the small entities identified by the commenter will be subject to registration with the Commission as an MSP.

In terms of having a significant economic effect, in the experience of the Commission, complying with the registration process regulations has not had a significant economic effect on a substantial number of small entities. Notably, Regulation 3.10, containing the same registration requirements as those being issued today for SDs and MSPs, has been applicable to IBs and CTAs [79] without any known significant economic effects since 1983.[80] Most recently, in connection with its adoption of substantively similar registration regulations for RFEDs, the Commission stated that, in light of Congressionally-mandated capital requirements, it would not define RFEDs as small entities for Reg Flex Act purposes.[81] There is no indication, from the Commission's experience or the information presented by the commenter, that the registration process requirements for Swaps Entities would have an effect on small entities that would be subject to those requirements, if any, that would be different than the effect the same registration process requirements have had historically on other Commission registrants that also may be small.

Accordingly, for the reasons stated in the Proposal and the additional rationale provided above, the Commission continues to believe that the SD and MSP registration process rulemaking will not have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the regulations being published today by this **Federal Register** release will not have a significant economic impact on a substantial number of small entities.

[69] 5 U.S.C. 601 *et seq.*

[70] 5 U.S.C. 601(2), 603, 604 and 605.

[71] 75 FR 71379, 71385.

[72] 47 FR 18618 (Apr. 30, 1982).

[73] *See* CEA section 1a(49)(D).

[74] 75 FR at 71385.

[75] *Id.*

[76] *Id.*

[77] *Id.* at 71385–86.

[78] Comment letter from the National Rural Electric Cooperative Association, American Public Power Association, Large Public Power Council, Edison Electric Institute, and Electric Power Supply Association (June 3, 2011).

[79] The Commission historically has evaluated on a case-by-case basis the economic impact of a particular regulatory proposal on IBs and CTAs to determine whether the regulatory proposal will have a significant economic effect on a substantial number of small entities. *See, e.g.,* 76 FR 33066, 33079 (June 7, 2011) (initial regulatory flexibility analysis conducted with respect to the possible economic effects of a proposal to require IBs, among others, to maintain records of certain oral communications).

[80] *See* 48 FR 35248 (Aug. 3, 1983).

[81] *See* 75 FR 55410, 55416 (Sep. 10, 2010). CEA section 2(c)(2) generally requires an RFED to maintain adjusted net capital equal to or in excess of $20,000.000.

B. PaperworkReduction Act

1. Introduction

The Paperwork Reduction Act (PRA)[82] imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of these regulations will result in new collection of information requirements within the meaning of the PRA. 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 control number.

The Commission submitted the Proposal to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission requested that OMB approve and assign a new control number for the collection of information covered by the Proposal. The title for this collection of information is ''Registration of Swap Dealers and Major Swap Participants.'' OMB has assigned OMB control number 3038–0072 to the Information Collection Request (ICR) in connection with the Proposal, but OMB has not yet approved the ICR. The OMB control number will not appear in the active inventory until OMB grants approval.

Under the regulations that the Commission is adopting today, Swaps Entities that must register with the Commission will be obligated to file, periodically review and update certain registration forms. Responses to the collection of information contained within these final regulations are mandatory, and the Commission will protect proprietary information according to the Freedom of Information Act[83] and Part 145 of the Commission's regulations, ''Commission Records and Information.'' In addition, the Commission emphasizes that CEA section 8(a)(1) strictly prohibits the Commission, unless specifically authorized by the CEA, from ''publish[ing] data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' The Commission also is required to protect certain information contained in a government system of records pursuant to the Privacy Act of 1974.[84]

In the Proposal, the Commission estimated that there would be 300 ''Respondents/Affected Entities'' (respondents) and that the ''respondent burden for this collection is estimated to average 0.5 hours per response for the Form 7–R; 0.4 hours per response for the Form 8–R; 3 minutes per response for the Form 7–W; 6 minutes per response for the Form 8–T; and 3 minutes per response for the Form 3–R.''[85] As is discussed previously in this **Federal Register** release, the Commission has modified from the Proposal certain of the regulations it is adopting today. The Commission believes that none of these modifications affect the burden estimates associated with the information collection that the Commission proposed. In response to comments received, the Commission has determined to increase the respondent burden hours estimated for Swaps Entities for each of the forms referenced above. The Commission is also decreasing the number of respondents to 125 from the Proposal's estimate of 300. The following sections address and respond to comments received on the proposed burden estimates, explain the Commission's reduction of the estimated number of respondents to this collection, discuss the registration fees included in this rulemaking, and list the revised burden hour estimates associated with this information collection and the final regulations adopted today.

2. Responses to Comments Received

The Commission invited the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicited comments in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to 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 able to respond, including through the use of automated collection techniques or other forms of information technology.

OMB commented on the ICR in accordance with 5 CFR 1320.11(c), questioning the burden hours estimated, which appeared to OMB to be low. OMB stated that the Commission should consider the comments it received on the Proposal, if any, to determine if the burden hours estimated should be revised.

The Commission received one other comment on its PRA discussion in the Proposal. This commenter stated in its letter that, ''[a]lthough the Paperwork Reduction Act section of the release accompanying the Proposed Regulations (the 'Release') suggests that it will merely take a matter of minutes for Swaps Entities to complete the forms required by the Proposed Regulations, we are dubious that this is accurate.''[86] This commenter did not explain why it doubted the accuracy of the estimates, nor did it suggest alternative burden estimates. Nonetheless, the Commission has reviewed its PRA estimates in light of this comment, as well as the comment provided by OMB. For the following reasons, the Commission has determined to revise the burden hour estimates in the Proposal.

Generally, these forms request only the information about an applicant and its principals necessary for the Commission to appropriately exercise its statutory registration and compliance oversight functions with respect to them. This information generally includes the names, addresses, location of records, regulatory and disciplinary histories, and other similarly straightforward matters—all of which should be in the possession of the applicant and readily available for the applicant to provide. However, some Swaps Entities may be unfamiliar with the current registration process and the Forms 7–R and 8–R that they must complete in order to apply for registration as an SD or MSP.

The PRA estimates provided for these forms are averages that do not necessarily reflect the actual time to be expended by each and every person to complete the forms. The Commission's estimates do not account significantly for the amount of time it would take to complete the regulatory and disciplinary history sections of Forms 7–R and 8–R, which impose the greatest burden on persons completing the forms where the applicant SD or MSP (including a principal thereof) has an extensive criminal or disciplinary history. The Commission believes such SDs and MSPs will generally not be applying for registration in the first place because they will likely be disqualified from registration pursuant to CEA section 8a(2) or 8a(3). In addition, these forms will be completed in an online, user-friendly process developed by NFA, the Commission's delegee pursuant to CEA section 8a(10), which process currently is used by all

[82] 44 U.S.C. 3501 *et seq.*

[83] 5 U.S.C. 552.

[84] 5 U.S.C. 552a.

[85] 75 FR at 71386.

[86] ISDA Comment Letter.

other applicants for registration with the Commission.

Moreover, in proposing and adopting regulations applicable to the registration of Swaps Entities, the Commission has made every effort to establish a process that is minimally disruptive to the swap markets and minimally burdensome to Swaps Entities. In so doing, and as it proposed, the Commission is incorporating the registration process for Swaps Entities into the existing regulatory scheme for all other Commission registrants under Part 3—as opposed to constructing a fundamentally new registration structure for Swaps Entities. While current registrants may be familiar with this scheme, some Swaps Entities will not have previously applied for registration with the Commission, and the revised burden estimates take the potential unfamiliarity of new applicants for registration into account.

The forms that Swaps Entities will be required to complete are virtually identical to those forms that other Commission registrants must currently complete, including RFEDs, who became subject to the Commission's registration requirements in 2010. There is, however, an additional requirement to which Swaps Entities will be subject in connection with completing the Form 7–R. CEA section 4s(b)(6) prohibits a Swaps Entity, except to the extent otherwise provided by rule, regulation or order,[87] from permitting a person associated with it who is subject to a statutory disqualification to effect or be involved in effecting swaps on the Swaps Entity's behalf, if the Swaps Entity ''knew, or in the exercise of reasonable care should have known, of the statutory disqualification.'' [88] Form 7–R incorporates CEA section 4s(b)(6) into the application for registration as an SD or MSP by explicitly quoting the statutory language and requiring the applicant to certify that ''the applicant is and shall remain in compliance with section 4s(b)(6) of the Act.'' Because of the additional time required to gather such background information on a Swaps Entity's associated persons as is necessary to make that certification, the Commission believes an increase in the time required for the Swaps Entity to complete the Form 7–R is warranted.

As part of the registration process, the regulations being adopted today require Swaps Entities to demonstrate initial compliance with the Section 4s Implementing Regulations as the Commission adopts these regulations in order to obtain registration. However, because the Section 4s Implementing Regulations are not yet final, and because they will be phased in over time after the Commission adopts the registration process regulations today, the Commission is unable to estimate burden hours in connection with producing or collecting the documentation required to demonstrate compliance with the Section 4s Implementing Regulations. Consequently, the PRA estimates for this registration process rulemaking only include time to be expended by applicants' and registrants' personnel to complete the forms, and do not include time to be expended to collect, produce or otherwise develop the documentation required to demonstrate compliance with the Section 4s Implementing Regulations. The Commission has estimated the burden hours associated with information collections in connection with the Section 4s Implementing Regulations in the rulemakings proposing those regulations, and those burden hours need not be replicated here.

3. Reduction of the Estimated Number of Respondents

In the Proposal, the Commission took ''a conservative approach'' to calculating the burden hours of this information collection by estimating that as many as 300 persons would come within the SD or MSP definition and, thus, would be subject to registration with the Commission.[89] Since the Proposal's publication in November 2010, the Commission has met with industry participants and trade groups, discussed extensively the universe of potential registrants with NFA, and reviewed public information about potential SDs active in the market and certain trade groups. Over time, and as the Commission has gathered more information on the swap market and its participants, the estimate of the number of SDs and MSPs has decreased. In its FY 2012 budget drafted in February 2011, the Commission estimated that 140 SDs might register with the Commission.[90] After recently receiving additional specific information from NFA on the regulatory program it is developing for SDs and MSPs,[91] however, the Commission now believes that approximately 125 persons will come within the SD or MSP definition and, thus, be subject to registration with the Commission.[92]

4. Registration Fees

The Commission is permitted to collect registration fees under CEA section 8a(1). These registration fees are established by NFA as the Commission's delegee under CEA section 8a(10). NFA has not yet adopted, and the Commission has not yet approved, an NFA rule setting forth registration fees for SDs and MSPs, although NFA currently estimates that such Swaps Entity registration fee will be $15,000.[93] At such time as the Section 4s Implementing Regulations are finalized and the NFA registration fees established under CEA section 8a(1) are approved, the Commission will revise the information collection for which it has sought approval.

5. Revised Burden Hour Estimates for the Information Collection

For the reasons outlined above, the Commission has determined to revise the burden hour estimates for this information collection as follows. The burden associated with the new regulations implementing the registration process for SDs and MSPs is estimated to be 629 hours, assuming 125 respondents, which will result from: (1) Application for registration by SDs and MSPs and submission of required information on behalf of their respective principals; (2) initially, no withdrawals from registration by SDs or MSPs and a relatively small decrease in the number of their respective principals; and (3) initially, no reported corrections. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency.

The respondent burden for this collection is estimated to average 1 hour per response for the Form 7–R; 0.8 hours per response for the Form 8–R; 0.1 hours per response for the Form 7–W; 0.2 hours per response for the Form 8–T; and 0.1 hours per response for the Form 3–R. These estimates include the time needed: To review instructions; to

[87] *See, e.g., infra* Regulation 23.22(b).

[88] *See supra* pt. II.C for a detailed discussion of the prohibition in CEA section 4s(b)(6).

[89] 75 FR at 71386.

[90] CFTC, President's Budget and Performance Plan Fiscal Year 2010, p. 13–14 (Feb. 2011), *available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/cftcbudget2012.pdf.* The estimated 140 SDs includes ''[a]pproximately 80 global and regional banks currently known to offer swaps in the United States;'' ''[a]pproximately 40 non-bank swap dealers currently offering commodity and other swaps;'' and ''[a]pproximately 20 new potential market makers that wish to become swap dealers.'' *Id.*

[91] Letter from Thomas W. Sexton, Senior Vice President and General Counsel, NFA, to Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, CFTC (Oct. 20, 2011) (NFA Cost Estimates Letter).

[92] The number of MSPs is estimated to be quite small, at six or fewer.

[93] *See infra* pt. III.C (discussing the costs and benefits of this rulemaking).

develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; and to transmit or otherwise disclose the information.

Form 7–R

Respondents/Affected Entities: 125.
Estimated number of responses: 125.
Estimated total annual burden on respondents: 1 hour.
Frequency of collection: On occasion and annually.
Burden statement: 125 respondents × 1 hour = 125 Burden Hours.

Form 8–R

Respondents/Affected Entities: 5 principals per each of 125 SDs and MSPs.
Estimated number of responses: 625.
Estimated total annual burden on respondents: 0.8 hours.
Frequency of collection: On occasion.
Burden statement: 625 respondents × 0.8 hours = 500 Burden Hours.

Form 8–T

Respondents/Affected Entities: 1 principal per each of 20 SDs and MSPs.
Estimated number of responses: 20.
Estimated total annual burden on respondents: 0.2 hours.
Frequency of collection: On occasion.
Burden statement: 20 respondents × 0.2 hours = 4 Burden Hours.

C. Considerations of Costs and Benefits of the Rulemaking

This final rulemaking implements provisions of the CEA, as amended by the Dodd-Frank Act, mandating the registration of Swaps Entities. CEA section 4s(a) makes it unlawful for a person to act as an SD or MSP unless it is registered with the Commission. CEA section 4s(b) requires an SD or MSP to apply for registration in accordance with such form and manner as the Commission may prescribe. To effectuate the Congressional directive, this final rulemaking: Details the registration process for SDs and MSPs; requires Swaps Entities to become and remain members of an RFA; and implements the prohibition against a Swaps Entity permitting a statutorily disqualified associated person from effecting or being involved in effecting swaps on behalf of the Swaps Entity.

CEA section 15(a) requires the Commission to consider the costs and benefits of its actions before promulgating regulations. The Commission must evaluate costs and benefits in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

Before adopting these registration process regulations for Swaps Entities, the Commission sought public comment on the Proposal, including comment on the costs and benefits of the Proposal.[94] The Commission has considered all comments, and, in particular, reasonable alternatives suggested by commenters. In some instances, for the reasons discussed above, the Commission has adopted such alternatives or modifications to the proposed regulations where, in the Commission's judgment, the alternative or modification accomplishes the same regulatory objective in a more effective manner. The Commission also specifically invited commenters to submit ''any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.'' [95] Other than estimates of registration fees and annual membership dues from NFA (currently the only RFA),[96] the Commission did not receive any information quantifying or qualifying the costs or benefits of the proposed regulations relating to the registration process for Swaps Entities. The Commission did, however, receive general comments on the cost-benefit considerations of the rulemaking. These are addressed in the discussion below.

1. Benefits of SD and MSP Registration Regulations

The Commission believes that the benefits of this final rulemaking are considerable even if not quantifiable. Registration, as mandated by Congress in the Dodd-Frank Act, will enable the Commission to increase market integrity and protect market participants and the public by identifying the universe of SDs and MSPs subject to heightened regulatory requirements and oversight in connection with their swaps activities. This rulemaking identifies the process to commence registration by an SD or MSP, specifies the applicable registration forms, and explains how SDs and MSPs should apply for registration. The Commission believes that this final rulemaking's specification of a registration process for SDs and MSPs administered by an RFA leverages the RFA's existing expertise and economies of scale and scope.

Further, and as is discussed above,[97] the Commission is exercising its discretion under the Dodd-Frank Act to provide for an exception in Regulation 23.22 from the prohibition against an SD or MSP permitting a person associated with it who is subject to a statutory disqualification to effect or be involved in effecting swaps on its behalf. In taking this action, the Commission is limiting the burden on SDs and MSPs with respect to their vetting of potential associated persons.

2. Costs of SD and MSP Registration Regulations

The Commission has identified and considered several costs associated with this rulemaking. First, an SD or MSP must pay fees to register with the Commission through NFA. Second, because this rulemaking requires a registrant to become and remain a member of an RFA—and NFA is currently the only RFA—Swaps Entities will incur the costs of annual NFA membership dues. Third, NFA is expected to incur expenses for executing the anticipated delegated registration process function on the Commission's behalf and for monitoring compliance by its SD and MSP members with NFA rules.[98] Fourth, Swaps Entities will incur costs when completing various CFTC registration forms that must be filed with NFA.

The Commission is obligated to estimate the burden of and provide supporting statements for any collection of information it seeks to establish under considerations contained in the PRA, and seek approval of those requirements from OMB. Therefore, the estimated burden and support of the collection of information in this rulemaking, as well as consideration of the comments thereto, are discussed in the PRA section of this rulemaking as required by that statute.[99] Registrants are required to update these forms when the information provided therein changes and to confirm these changes annually.

[94] *See* 75 FR 71379 at 71386–87.

[95] *Id.*

[96] NFA Cost Estimates Letter.

[97] *See supra* pt. II.C.

[98] The NFA Cost Estimates Letter explains that NFA will incur direct and indirect costs associated with employing staff to perform this review and confirmation, and that the registration fee estimate of $15,000 has been designed to offset a portion of the costs that NFA will incur in this regard.

[99] *See supra* pt. III.B.

a. Fees and Dues

Based on current estimates from NFA, the Commission believes that SDs and MSPs will incur the following registration fees: (a) $15,000 per SD or MSP registration application, which will include the initial determination by NFA of compliance with the Section 4s Implementing Regulations; [100] and (b) $85 per person for processing fingerprints and background information for principals.[101]

Based on current estimates from NFA, the Commission believes that SDs and MSPs will incur annual NFA membership dues ranging from $125,000 to $1,000,000 per member, based upon the size and complexity of the firm's swap business.[102] The increase in the estimate of NFA membership dues is driven by two factors: First, the decision by NFA to recover costs for oversight of its SD and MSP members primarily through a membership dues structure, rather than assessing a fee on swap transactions similar to the fee NFA imposes on futures transactions; and second, NFA's estimate of the annual cost of its regulatory program for Swaps Entities when that program is fully staffed and operational. It is possible that NFA's estimates will change over time. Additionally, rules relating to membership dues must be approved by various NFA authorities, and, in accordance with CEA section 17(j), must be approved by the Commission. The Commission expects that NFA will submit these rules for full review and approval.[103]

b. NFA Expenses

Concurrently with the adoption of these regulations, the Commission intends to issue the Notice and Order, whereby it will delegate to an RFA—*i.e.,* NFA—its authority to register SDs and MSPs. Included in this delegation will be the authority to determine an applicant's fitness for registration and initial compliance with the Section 4s Implementing Regulations as they relate to the applicant. Also, the Commission is adopting proposed Regulation 170.16 to require that SDs and MSPs become and remain members of an RFA. As is stated above, NFA currently is the sole RFA.

Consistent with the current regulatory practice for Commission registrants who are NFA members, NFA will be responsible for monitoring compliance with NFA rules applicable to its members who are SDs and MSPs.[104] NFA therefore will incur overhead and direct costs on a continuing basis attributable to oversight activities to confirm SD and MSP compliance with applicable NFA rules in addition to performing registration processing functions.[105] NFA's currently estimated $15,000 application fee for registering SDs and MSPs does not include charges related to ongoing NFA oversight of its SD and MSP members for compliance with NFA rules—which, as is stated above, NFA expects to recover through the dues it will charge its SD and MSP members.

NFA's regulatory program for the oversight of Swaps Entities will entail significant costs. Based on an assumption of 125 SD and MSP members, NFA estimates that the annual cost of this regulatory program when it is fully staffed and operational in approximately three years will be approximately $35–$45 million.[106] NFA has stated that ''[i]n order to generate at least $35 million in revenue, [NFA has] preliminarily calculated that membership dues for SDs and MSPs could range between $125,000–$1 million per Member firm based upon the size and complexity of the firm's swaps business.''[107]

By delegating the authority to perform the registration functions for SDs and MSPs to an RFA, the Commission will avoid the expense of establishing a new registration program within the agency and will provide a familiar and efficient means of implementing the statutory requirements for the registration of SDs and MSPs.[108] Some SDs and MSPs will have previous experience with the registration process for futures intermediaries. The Commission believes that by delegating the registration process to an established RFA that already has similar oversight responsibilities for other persons registered with the Commission, the regulatory objectives of the Dodd-Frank Act can be achieved in a more cost-effective manner. The Commission anticipates that delegating the authority to perform registration functions for SDs and MSPs to an RFA will avoid the costs associated with duplicating the systems, processes, and personnel of the RFA.[109]

Thus, the Commission believes that it will be more cost-effective for NFA to augment its current systems and processes to accommodate the new SD and MSP registrants than it would be for the Commission to build the same capabilities. The Commission further believes that the delegation of the authority to process SD and MSP registration applications to an RFA, with the imposition of fees on those persons who must register, is a prudent and effective approach. This model, currently employed in the futures context, has worked successfully for Commission registrants and the Commission for many years. While one of the commenters on the Proposal expressed concern about NFA's current lack of swaps expertise, the Commission notes NFA's recent efforts to develop expertise in this area (*e.g.,* forming a Swap Dealer Advisory Committee in May 2010 [110]) and, accordingly, does not believe this concern merits a different conclusion.

c. Registration of Foreign Swaps Entities

The Commission received many comments on the Proposal from entities such as foreign banks and derivatives dealers arguing that several of the Commission's proposed regulations, taken together, would require massive and potentially expensive internal reorganizations to comply with the new swaps regulatory regime. Some commenters predicted adverse consequences to the U.S. swaps markets if foreign entities were required to register as SDs or MSPs, such as

[100] The Commission estimated $500 for the SD/MSP registration application fee in the Proposal, based on information NFA provided to staff upon request in connection with the development of the Proposal. *See* 75 FR at 71387. Since then, NFA significantly altered the registration fees it estimates it will be charging SD and MSP applicants, due to NFA's expected review and confirmation of an SD or MSP's initial compliance with each Section 4s Implementing Regulation prior to the SD or MSP becoming registered. NFA Cost Estimates Letter.

[101] This amount is unchanged from the Proposal. *See* 75 FR at 71387.

[102] NFA Cost Estimates Letter.

[103] *Id.* (stating that NFA will submit these proposed initial registration fees, and membership dues to the Commission for full review and approval).

[104] These NFA requirements will be as strict as or stricter than the Section 4s Implementing Regulations, and like registration fees and membership dues, will be subject to Commission review and approval pursuant to CEA section 17(j). *See supra* pt. II.E.

[105] For futures transactions, NFA collects a fee per transaction. Initially, NFA expected to collect a fee per transaction from its SD and MSP members to defray the costs of overseeing their operations and activities, an approach it is no longer pursuing. NFA Cost Estimates Letter.

[106] NFA Cost Estimates Letter. In the Proposal, the Commission estimated for PRA purposes that as many as 250 SDs and 50 MSPs may register. *See* 75 FR at 71386. Should there be more than 125 Swaps Entities, NFA's total annual costs for the regulatory program may exceed this estimate. NFA Cost Estimates Letter.

[107] NFA Cost Estimates Letter.

[108] One commenter wrote that ''given the budgetary uncertainty faced by the Commission'' the delegation to RFA-registration model provides the Commission with ''flexibility'' in its oversight of SDs and MSPs. NEFI/PMAA Comment Letter.

[109] One commenter stated that SROs reduce the costs of regulation to the government and the taxpayer. ISDA Comment Letter.

[110] NFA Cost Estimates Letter.

decreased competition, reduced liquidity, an exodus of foreign-based market participants from the U.S. markets, rising costs for their U.S. customers, and increased systemic risk. Some argued that the Commission should defer to regulators in the home jurisdiction lest participants be subject to multiple and inconsistent regulatory burdens.[111] Most of these comments address the question of which entities are SDs or MSPs, and the consequences of being required to register as such, rather than the costs of the registration process *per se.*

The Commission generally does not believe that foreign-based Swaps Entities will bear higher costs associated with the registration process than U.S.-based Swaps Entities. The identified costs are fees to become registered under the CEA with the Commission and annual NFA membership dues. Many of these foreign-based commenters are already familiar with navigating various U.S. federal and state regulatory regimes in connection with their other lines of business, such as banking and insurance. Moreover, many of the commenters already have operations and capable personnel physically located in the U.S. To the extent that an SD or MSP has neither familiarity with other U.S. regulatory regimes nor personnel physically located in the U.S., the Commission believes that any potentially higher costs that may be incurred in connection with the registration process regulations by a foreign-based Swaps Entity are a necessary consequence of adequately regulating the U.S. swaps markets and ensuring a level playing field for all intermediaries involved in the U.S. swaps markets.

3. Evaluation of Market and Public Interest Considerations in Light of CEA Section 15(a)

(1) Protection of Market Participants and the Public

The registration of Swaps Entities is a critical component of the comprehensive regulation of these persons. It is a statutory requirement that SDs and MSPs be registered. Notably, the registration process will serve to confirm initial compliance by an SD or MSP with the Section 4s Implementing Regulations. Moreover, attendant to applying for registration, SDs and MSPs, along with their principals, will be vetted, and those deemed unfit will be barred from registration. As a result, registration and the related requirements[112] of this final rulemaking will help protect the public by preventing those unfit to intermediate and participate in the swaps markets from registering in the first instance.

Also, NFA provides an on-line, public database, the Background Affiliation Status Information Center (BASIC), with information on each registrant's status and the status of the registrant's principals. BASIC also provides additional information, such as regulatory actions taken by NFA or the Commission, with respect to a registrant or its principals. Access to this database provides all persons with important information about Commission registrants with whom they may seek to transact business.

(2) Efficiency, Competitiveness, and the Financial Integrity of the Market

Utilizing NFA's existing registration expertise and resources promotes efficiency in that it employs NFA's existing capabilities rather than requiring Commission investment (*e.g.,* hiring staff and building a technological infrastructure to process applications) to build a new registration system. Similarly, because NFA is building upon its existing oversight infrastructure, it should incur fewer costs to oversee compliance relative to direct Commission oversight. While the Commission will continue to oversee the registration process, delegation of the performance of registration functions to an RFA will avoid the unnecessary diversion of limited agency resources from the Commission's other responsibilities to protect the public.

(3) Price Discovery

The Commission has not identified any impact on price discovery through the registration provisions of this rulemaking.

(4) Sound Risk Management Practices

As is explained above, registration is a critical component within the Dodd-Frank Act regulatory regime to ensure the fitness of SDs and MSPs. In addition to disqualifying ineligible persons, it enhances market participants' ability to make more informed counterparty selection decisions. In this way, it is consistent with sound risk management practices.

(5) Other Public Interest Considerations

CEA section 15 directs the Commission to consider in its cost-benefit evaluation ''other public interest considerations.'' One such consideration is public confidence. As an element of a regulatory regime that establishes minimum participation standards, the Commission believes that the registration process will promote public confidence in swaps market integrity.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Definitions, Major swap participants, Swap dealers.

17 CFR Part 3

Customer protection, Licensing, Major swap participants, Registration, Swap dealers.

17 CFR Part 23

Associated persons, Major swap participants, Registration, Swap dealers.

17 CFR Part 170

Membership, Registered futures associations.

For the reasons presented above, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6*i,* 6k, 6*l,* 6m, 6n, 6*o,* 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (July 21, 2010).

■ 2. In § 1.3, paragraph (aa)(6) is added to read as follows:

§ 1.3 Definitions.

* * * * *

(aa) * * *

(6) A swap dealer or major swap participant as a partner, officer, employee, agent (or any natural person occupying a similar status or performing similar functions), in any capacity that involves:

(i) The solicitation or acceptance of swaps (other than in a clerical or ministerial capacity); or

[111] These commenters did not quantify these costs. Further, the Commission is unable to estimate these costs, which it views as not directly related to the costs of the registration process regulations for SDs and MSPs. These costs are more costs of compliance with the Section 4s Implementing Regulations, which the Commission intends to address as it finalizes those regulations.

[112] *E.g.,* as a prerequisite to granting registration, NFA will confirm initial compliance by an applicant for registration as an SD or MSP with each Section 4s Implementing Regulation, and a Swaps Entity may not, subject to certain limited exceptions, permit a statutorily disqualified associated person to effect or be involved in effecting swaps on its behalf.

(ii) The supervision of any person or persons so engaged.

* * * * *

PART 3—REGISTRATION

■ 3. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6*i,* 6k, 6m, 6n, 6*o,* 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (July 21, 2010).

■ 4. Section 3.1 is amended by adding paragraphs (f) and (g) to read as follows:

§ 3.1 Definitions.

* * * * *

(f) *Section 4s Implementing Regulation.* Section 4s Implementing Regulation means a regulation the Commission issues pursuant to section 4s(e), 4s(f), 4s(h), 4s(*i*), 4s(j), 4s(k), or 4s(*l*) of the Act.

(g) *Swap Definitional Regulation.* Swap Definitional Regulation means a regulation the Commission issues to further define the term ''swap dealer,'' ''major swap participant'' or ''swap'' in section 1a(49), 1a(33) or 1a(47) of the Act, respectively, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.

■ 5. Section 3.2 is amended by:

■ a. Revising the section heading; and

■ b. Adding paragraph (c)(3).

The revision and addition read as follows:

§ 3.2 Registration processing by the National Futures Association; notification and duration of registration; provisional registration.

* * * * *

(c) * * *

(3)(i) If an applicant for registration as a swap dealer or major swap participant pursuant to § 3.10(a)(1)(v) files a Form 7–R and a Form 8–R and fingerprint card for each natural person who is a principal of the applicant, accompanied by such documentation as may be required to demonstrate compliance with each of the Section 4s Implementing Regulations, as defined in § 3.1(f), as are applicable to it, in accordance with the terms of the Section 4s Implementing Regulations, the National Futures Association shall notify the swap dealer or major swap participant, as the case may be, that it is provisionally registered.

(ii) Subsequent to providing notice of provisional registration to an applicant for registration as a swap dealer or major swap participant, the National Futures Association shall determine whether the documentation submitted pursuant to § 3.10(a)(1)(v) by the applicant demonstrates compliance with the Section 4s Implementing Regulation to which it pertains; *Provided,* that where the National Futures Association has notified the applicant that it is provisionally registered, the applicant must supplement its registration application by providing such documentation as may be required to demonstrate compliance with each Section 4s Implementing Regulation that the Commission issues subsequent to the date the National Futures Association notifies the applicant that it is provisionally registered.

(iii) On and after the date on which the National Futures Association confirms that the applicant for registration as a swap dealer or major swap participant has demonstrated its initial compliance with the applicable requirements of each of the Section 4s Implementing Regulations and all other applicable registration requirements under the Act and Commission regulations, the provisional registration of the applicant shall cease and it shall be registered as a swap dealer or major swap participant, as the case may be.

* * * * *

■ 6. Section 3.4 is amended by revising paragraph (a) to read as follows:

§ 3.4 Registration in one capacity not included in registration in any other capacity.

(a) Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, each futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, leverage transaction merchant, floor broker, floor trader, and associated person (other than an associated person of a swap dealer or major swap participant) must register as such under the Act. Registration in one capacity under the Act shall not include registration in any other capacity; *Provided, however,* That a registered floor broker need not also register as a floor trader in order to engage in activity as a floor trader.

* * * * *

■ 7. Section 3.10 is amended by:

■ a. Revising the section heading;

■ b. Revising paragraph (a)(1)(i);

■ c. Adding paragraphs (a)(1)(iii), (iv), and (v); and

■ d. Revising paragraphs (b)(1) and (d).

The additions and revisons read as follows:

§ 3.10 Registration of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, swap dealers, major swap participants and leverage transaction merchants.

(a) *Application for registration.* (1)(i) Except as provided in paragraph (a)(3) of this section, application for registration as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant must be on Form 7–R, completed and filed with the National Futures Association in accordance with the instructions thereto.

* * * * *

(iii) Applicants for registration as a commodity pool operator must accompany their Form 7–R with the financial statements described in § 4.13(c) of this chapter.

(iv) Applicants for registration as a leverage transaction merchant must accompany their Form 7–R with a Form 2–FR in accordance with the provisions of § 31.13 of this chapter.

(v)(A) Applicants for registration as a swap dealer or major swap participant must accompany their Form 7–R with such documentation as may be required to demonstrate compliance with each Section 4s Implementing Regulation, as defined in § 3.1(f), applicable to them, in accordance with the terms of the Section 4s Implementing Regulation; *Provided, however, that* for the purposes of this paragraph (a)(1)(v) the term ''compliance'' includes the term ''the ability to comply,'' to the extent that a particular Section 4s Implementing Regulation may require demonstration of the ability to comply with a requirement thereunder.

(B) The filing of the Form 7–R and accompanying documentation by the applicant swap dealer or major swap participant authorizes the Commission to conduct on-site inspection of the applicant to determine compliance with the Section 4s Implementing Regulations applicable to it.

(C)(*1*) At any time prior to the latest effective date of the Swap Definitional Regulations, defined in § 3.1(g), any person may apply to be registered as a swap dealer or major swap participant.

(*2*) By no later than the latest effective date of the Swap Definitional Regulations, each person who is a swap dealer or major swap participant on that date must apply to be registered as a swap dealer or major swap participant, as the case may be.

(*3*) From and after the latest effective date of the Swap Definitional

Regulations, each person who intends to engage in business as a swap dealer or major swap participant must apply to be registered as a swap dealer or major swap participant, as the case may be.

(D)(*1*) Where an applicant for registration as a swap dealer or major swap participant to whom the National Futures Association has provided notice of provisional registration under § 3.2(c)(3) fails to demonstrate compliance with a Section 4s Implementing Regulation, the National Futures Association will notify the applicant that its application is deficient, whereupon the applicant must withdraw its registration application, it must not engage in any new activity as a swap dealer or major swap participant, as the case may be, and the applicant shall cease to be provisionally registered; *Provided,* that in the event the applicant fails to withdraw its registration application or cure the deficiency within 90 days following receipt of notice from the National Futures Association that its application is deficient, the application will be deemed withdrawn and thereupon its provisional registration shall cease; *Provided further,* that upon written request by the applicant submitted to the Commission, the Commission may in its discretion extend the time by which the applicant must cure the deficiency.

(*2*) The provisions of the foregoing paragraph (a)(1)(v)(D)(*1*) of this section shall supplement and be in addition to any other activities in which the National Futures Association engages under the Act and Commission regulations in connection with processing an application for registration as a swap dealer or major swap participant.

(E) Unless specifically reserved in the applicable swap documentation, no withdrawal, deemed withdrawal, cessation or revocation of registration as a swap dealer or major swap participant pursuant to paragraph (a)(1)(v), (b), or (d) of this section shall constitute a termination event, force majeure, an illegality, increased costs, a regulatory change, or a similar event under a swap (including any related credit support arrangement) that would permit a party to terminate, renegotiate, modify, amend or supplement one or more transactions under the swap.

* * * * *

(b) *Duration of registration.* (1) A person registered as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant in accordance with paragraph (a) of this section will continue to be so registered until the effective date of any revocation or withdrawal of such registration. Upon effectiveness of any revocation or withdrawal of registration, such person will immediately be prohibited from engaging in new activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration.

* * * * *

(d) On a date to be established by the National Futures Association, and in accordance with procedures established by the National Futures Association, each registrant as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant shall, on an annual basis, review and update registration information maintained with the National Futures Association. The failure to complete the review and update within thirty days following the date established by the National Futures Association shall be deemed to be a request for withdrawal from registration, which shall be processed in accordance with the provisions of § 3.33(f).

* * * * *

■ 8. Section 3.21 is amended by:

■ a. Revising paragraph (c) introductory text and paragraph (c)(1)(iv);

■ b. Adding paragraph (c)(1)(v);

■ c. Revising paragraph (c)(2)(i); and

■ d. Revising paragraph (c)(4)(i).

The revisions and addition read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

* * * * *

(c) *Outside directors.* Any futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant that has a principal who is a director but is not also an officer or employee of the firm may, in lieu of submitting a fingerprint card in accordance with the provisions of §§ 3.10(a)(2) and 3.31(a)(3), file a ''Notice Pursuant to Rule 3.21(c)'' with the National Futures Association. Such notice shall state, if true, that such outside director:

(1) * * *

(iv) The solicitation of leverage customers' orders for leverage transactions,

(v) The solicitation or acceptance of a swap agreement;

(2) * * *

(i) Transactions involving ''commodity interests,'' as that term is defined in § 1.3(yy);

* * * * *

(4) * * *

(i) The name of the futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, leverage transaction merchant, or applicant for registration in any of these capacities of which the person is an outside director;

* * * * *

■ 9. Section 3.30 is amended by revising paragraph (a) to read as follows:

§ 3.30 Current address for purpose of delivery of communications from the Commission or the National Futures Association.

(a) The address of each registrant, applicant for registration, and principal, as submitted on the application for registration (Form 7–R or Form 8–R) or as submitted on the biographical supplement (Form 8–R) shall be deemed to be the address for delivery to the registrant, applicant or principal for any communications from the Commission or the National Futures Association, including any summons, complaint, reparation claim, order, subpoena, special call, request for information, notice, and other written documents or correspondence, unless the registrant, applicant or principal specifies another address for this purpose: *Provided, that* the Commission or the National Futures Association may address any correspondence relating to a biographical supplement submitted for or on behalf of a principal to the futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant with which the principal is affiliated and may address any correspondence relating to an associated person to the futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant with which the associated person or the applicant for registration is or will be associated as an associated person.

* * * * *

■ 10. Section 3.31 is amended by revising paragraphs (a)(1), (b), and (c)(2) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a)(1) Each applicant or registrant as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant shall, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7–R or Form 8–R which no longer renders accurate and current the information contained therein. Each such correction shall be made on Form 3–R and shall be prepared and filed in accordance with the instructions thereto. *Provided, however,* that where a registrant is reporting a change in the form of organization from or to a sole proprietorship, the registrant must file a Form 7–W regarding the pre-existing organization and a Form 7–R regarding the newly formed organization.

* * * * *

(b)(1) Each applicant for registration or registrant as a floor broker, floor trader or associated person, and each principal of a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8–R or supplemental statement thereto which renders no longer accurate and current the information contained in the Form 8–R or supplemental statement. Each such correction must be made on Form 3–R and must be prepared and filed in accordance with the instructions thereto.

(2) Each applicant for registration or registrant as a swap dealer or major swap participant and each principal of a swap dealer or major swap participant, must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8–R or supplemental statement thereto which renders no longer accurate and current the information contained in the Form 8–R or supplemental statement. Each such correction must be made on Form 3–R and must be prepared and filed in accordance with the instructions thereto.

(c) * * *

(2) Each person registered as, or applying for registration as, a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant must, within thirty days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the National Futures Association.

* * * * *

■ 11. Section 3.33 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraph (b) introductory text and paragraphs (b)(6)(vi) and (vii);

■ c. Adding paragraphs (b)(6)(viii) and (ix); and

■ d. Revising paragraph (e).

The revisions and additions to read as follows:

§ 3.33 Withdrawal from registration.

(a) A futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, leverage transaction merchant, floor broker or floor trader may request that its registration be withdrawn in accordance with the requirements of this section if:

* * * * *

(b) A request for withdrawal from registration as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant must be made on Form 7–W, and a request for withdrawal from registration as a floor broker or floor trader must be made on Form 8–W, completed and filed with the National Futures Association in accordance with the instructions thereto. The request for withdrawal must be made by a person duly authorized by the registrant and must specify:

* * * * *

(6) * * *

(vi) The nature and extent of any pending customer, retail forex customer, option customer, leverage customer, swap counterparty or commodity pool participant claims against the registrant, and, to the best of the registrant's knowledge and belief, the nature and extent of any anticipated or threatened customer, option customer, leverage customer, swap counterparty or commodity pool participant claims against the registrant;

(vii) In the case of a futures commission merchant or a retail foreign exchange dealer which is a party to a guarantee agreement, that all such agreements have been or will be terminated in accordance with the provisions of § 1.10(j) of this chapter not more than thirty days after the filing of the request for withdrawal from registration;

(viii) In the case of a swap dealer, that the person will not engage in any new activity described in the definition of the term ''swap dealer'' in section 1a(49) of the Act, as such term may be further defined by the Commission; and

(ix) In the case of a major swap participant, that the person will not engage in any new activity described in the definition of the term ''major swap participant'' in section 1a(33) of the Act, as such term may be further defined by the Commission.

* * * * *

(e) A request for withdrawal from registration as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant on Form 7–W, and a request for withdrawal from registration as a floor broker or floor trader on Form 8–W, must be filed with the National Futures Association and a copy of such request must be sent by the National Futures Association within three business days of the receipt of such withdrawal request to the Commodity Futures Trading Commission, Division of Swap Dealer and Intermediary Oversight, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. In addition, any floor broker or floor trader requesting withdrawal from registration must file a copy of his Form 8–W with each contract market that has granted him trading privileges. Within three business days of any determination by the National Futures Association under § 3.10(d) to treat the failure by a registrant to file an annual Form 7–R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination.

* * * * *

■ 12. Part 23 is added to read as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

Subpart A—[Reserved]

Sec.

23.1–23.20 [Reserved]

Subpart B—Registration

23.21 Registration of swap dealers and major swap participants.

23.22 Associated persons of swap dealers and major swap participants.

23.23–23.40 [Reserved]

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6p, 6s, 9, 9a, 13b, 13c, 16a, 18, 19, 21 as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (July 21, 2010).

Subpart A—Definitions

§§ 23.1–23.20 [Reserved]

Subpart B—Registration

§ 23.21 Registration of swap dealers and major swap participants.

(a) Each person who comes within the definition of the term ''swap dealer'' in section 1a(49) of the Act, as such term may be further defined by the Commission, is subject to the registration provisions under the Act and to part 3 of this chapter.

(b) Each person who comes within the definition of the term ''major swap participant'' in section 1a(33) of the Act, as such term may be further defined by the Commission, is subject to the registration provisions under the Act and to part 3 of this chapter.

(c) Each affiliate of an insured depository institution described in section 716(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203 section 716(c), 124 Stat. 1376 (2010)) is required to be registered as a swap dealer if the affiliate is a swap dealer or as a major swap participant if the affiliate is a major swap participant.

§ 23.22 Associated persons of swap dealers and major swap participants.

(a) *Definition.* For the purpose of this section, the term ''person'' means an ''associated person of a swap dealer or major swap participant'' as defined in section 1a(4) of the Act and § 1.3(aa)(6).

(b) *Fitness.* No swap dealer or major swap participant may permit a person who is subject to a statutory disqualification under section 8a(2) or 8a(3) of the Act to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knows, or in the exercise of reasonable care should know, of the statutory disqualification; *Provided, however,* that the prohibition set forth in this paragraph (b) shall not apply to any person listed as a principal or registered as an associated person of a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant, or any person registered as a floor broker or floor trader, notwithstanding that the person is subject to a disqualification from registration under section 8a(2) or 8a(3) of the Act.

§§ 23.23–23.40 [Reserved]

PART 170—REGISTERED FUTURES ASSOCIATIONS

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

Authority: 7 U.S.C. 6p, 12a and 21.

■ 14. Section 170.16 is added to read as follows:

§ 170.16 Swap dealers and major swap participants.

Each person registered as a swap dealer or major swap participant must become and remain a member of at least one futures association that is registered under section 17 of the Act and that provides for the membership therein of such swap dealer or major swap participant, as the case may be, unless no such futures association is so registered.

Issued in Washington, DC, on January 11, 2012, by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Registration of Swap Dealers and Major Swap Participants—Commission Voting Summary and Statements of Commissioners

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rule to establish a process for the registration of swap dealers and major swap participants. The rule implements the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) mandate that these entities be subject to registration and regulation for their swaps business. Registration will enable the Commodity Futures Trading Commission to monitor swap dealers and major swap participants for compliance with the Dodd-Frank Act and Commission rulemakings. Through regulation of dealers, the Commission will be able to protect market participants and the public, as well as promote sound risk management practices. The final rule includes a requirement that swap dealers and major swap participants become members of a registered futures association, such as the National Futures Association (NFA).

In addition, I support the order delegating to the NFA the authority to register swap dealers and major swap participants. This will help efficiently allocate resources and provide the Commission with flexibility.

[FR Doc. 2012–792 Filed 1–18–12; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0106]

RIN 1625–AA08

Special Local Regulations; Recurring Marine Events in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the list of special local regulations established for recurring marine events at various locations within the geographic boundary of the Fifth Coast Guard District. This rule revises 33 CFR 100.501 by adding 6 new annual recurring marine events and modifying event date(s) for 12 previously established locations within the geographic boundary of the Fifth Coast Guard District. This rule also deletes 4 previously listed marine events and corresponding regulated areas that no longer occur. These regulations will apply to all events listed in the table attached to the regulation, and include events such as regattas, power boat races and marine parades. Special local regulations are established to provide for the safety of life on navigable waters during these events, reduce the Coast Guard's administrative workload and expedite public notification of events. Entry into or movement within these proposed regulated areas during the enforcement periods is prohibited without approval of the appropriate Captain of the Port.

DATES: This rule is effective February 21, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0106 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0106 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Dennis Sens, Prevention Division, Fifth Coast Guard District; telephone (757) 398–6204, email *Dennis.M.Sens@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

On October 12, 2011, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations; Recurring Marine Events in the Fifth Coast Guard District'' in the **Federal Register** (76 FR 63239). We received no comments on the proposed rule.

Basis and Purpose

The Coast Guard is revising the list of permanent special local regulations at 33 CFR 100.501, established for recurring marine events at various locations within the geographic boundary of the Fifth Coast Guard District. The Fifth Coast Guard District is comprised of the land areas and U.S. navigable waters adjacent to North Carolina, Virginia, District of Columbia, Maryland, Delaware and portions of Pennsylvania and New Jersey. For a detailed description of the geographical area of the district and each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

The Coast Guard is revising the list of special local regulations at 33 CFR 100.501, established for various marine events, by adding 6 new annual recurring events and modifying 12 previously established locations within the geographic boundary of the Fifth Coast Guard District. This rule also deletes 4 previously listed marine events and corresponding regulated areas that are no longer occurring. The special local regulated areas removed from this section include: Night in Venice, Ocean City, NJ; Baltimore County Community Waterfront Festival, Martin Lagoon, MD; Annapolis Triathlon Swim, Spa Creek, Severn River, MD; and Virginia state hydroplane championships, Western Branch, Elizabeth River, VA. Currently there are 57 special local regulations that are established and enforced at various periods throughout the year that are held on an annual basis. This rule will increase the total number of special local regulations to 59 locations for marine events within the boundary of the Fifth Coast Guard District. The table to 33 CFR 100.501 is renumbered within each section to facilitate future changes.

The Coast Guard is revising regulations at 33 CFR 100.501 by adding 6 new marine event locations to the permanent special local regulations listed in this section. The new special local regulations are listed in the following table, including reference by section as printed in the Table to § 100.501.

Number	Table to § 100.501 section	Location
1	a.3	Big Timber Creek, Westville, NJ.
2	a.4	North Atlantic Ocean, Atlantic City, NJ.
3	b.5	Chester River, Chestertown, MD.
4	b.14	Patapsco River, Northwest Harbor, Baltimore, MD.
5	b.19	Patuxent River, Solomons, MD.
6	c.23	Mattaponi River, Wakema, VA.

The Coast Guard is revising regulations at 33 CFR 100.501 by modifying 12 existing regulated areas. This revision involves changes to the event date(s) only. The revised special local regulations are listed in the following table, including reference by section as printed in the Table to § 100.501.

Number	Table to § 100.501 section	Location	Revision
1	b.1	Severn River, Annapolis, MD	Event date.
2	b.7	Severn River, Annapolis, MD	Event date.
3	b.9	Chester River, near Chestertown, MD	Event date.
4	b.11	Prospect Bay, Kent Narrows, MD	Event date.
5	b.13	Patapsco River, Baltimore, MD	Event date.
6	b.16	Choptank River, Cambridge, MD	Event date.
7	c.1	Western Branch, Elizabeth River, Portsmouth, VA	Event date.
8	c.6	Elizabeth River, Norfolk, VA	Event date.
9	c.	North Atlantic Ocean, Ocean City, MD	Event date.
10	d.1	Pasquotank River, Elizabeth City, NC	Event date.
11	d.3	Bogue Sound, Morehead City, NC	Event date.
12	d.4	Wrightsville Channel, Wilmington, NC	Event date.

This regulation currently includes events such as sailing regattas, power boat races, swim races, holiday parades, crew and other paddle craft races. Currently, there are 57 annual recurring marine events and many other non-recurring events within the Fifth Coast Guard District. In the past, the Coast Guard regulated these events by creating individual special local regulations on a case by case basis. Most of these events required only the establishment of a regulated area and assignment of a patrol commander to ensure safety. Issuing individual, annual special local regulations has created a significant administrative burden on the Coast Guard.

Additionally, for the majority of these events, the Coast Guard does not receive notification of the event, or important details of the event are not finalized by event organizers, with sufficient time to publish a notice of proposed rulemaking and final rule before the event date. The Coast Guard must therefore create temporary final rules that sometimes are completed only days before the event. This results in delayed notification to

the public, potentially placing the public and event participants at risk.

This rule will significantly relieve the administrative burden on the Coast Guard, and at the same time allow the sponsor of the event and the Coast Guard to notify the public of these events in a timely manner. The public would be provided with notice of events through the table attached to this regulation. This table lists each recurring marine event that may be regulated by the Coast Guard, and indicates the sponsor, as well as the date(s) and location of the event. Because the dates and locations of these events may change slightly from year to year, the specific information on each event, including the exact dates, specific areas, and description of the regulated area, would be provided to the public through a Local Notice to Mariners published before the event, as well as through Broadcast Notice to Mariners. This table would also be updated by the Coast Guard periodically to add new recurring events, remove events that no longer occur, and update listed events to ensure accurate information is provided.

Based on the nature of marine events, large number of participants and spectators, and the event locations, the Coast Guard has determined that the events listed in this rule could pose a risk to participants or waterway users if normal vessel traffic were to interfere with the event. Possible hazards include risks of participant injury or death resulting from near or actual contact with non-participant vessels traversing through the regulated areas. In order to protect the safety of all waterway users including event participants and spectators, this rule would establish special local regulations for the time and location of each marine event.

This prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless authorized by the Captain of the Port, or designated Coast Guard Patrol Commander. The designated ''Patrol Commander'' includes Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on their behalf. On-scene patrol commander may be augmented by local, State or Federal officials authorized to act in support of the Coast Guard.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is revising the special local regulations as outlined in this rulemaking and listed in the table to § 100.501.

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, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The effect of this action merely establishes the dates on which the existing regulations would be enforced and consolidates them within one regulation. It would not impose any additional restrictions on vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the areas where marine events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will only be enforced on marine events that have been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the areas where events are occurring. Additionally, in most cases, vessels will be able to safely transit around the regulated area at all times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area.

Assistance for Small Entities

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

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 cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h.), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. Under figure 2–1, paragraph (34)(h.), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Revise section 100.501 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

The following regulations apply to the marine events listed in the Table to § 100.501. These regulations will be effective annually, for the duration of each event listed in the Table to § 100.501. Annual notice of the exact dates and times of the effective period of the regulation with respect to each event, the geographical area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be published in Local Notices to Mariners and via Broadcast Notice to Mariners over VHF–FM marine band radio.

(a) *Definitions.* The following definitions apply to this section:

(1) *Coast Guard Patrol Commander.* A Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the respective Coast Guard Sector—Captain of the Port to enforce these regulations.

(2) *Official Patrol* means any vessel assigned or approved by the respective Captain of the Port with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(b) *Event Patrol.* The Coast Guard may assign an event patrol, as described in § 100.40 of this part, to each regulated event listed in the table. Additionally, a Patrol Commander may be assigned to oversee the patrol. The event patrol and Patrol Commander may be contacted on VHF–FM Channel 16.

(c) *Special local regulations.* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, a vessel in these areas shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(3) Only event sponsor designated participants and official patrol vessels are allowed to enter the regulated area.

(4) Spectators are only allowed inside the regulated area if they remain within a designated spectator area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at safe speed and without loitering.

(d) *Contact information.* Questions about marine events should be addressed to the local Coast Guard Captain of the Port for the area in which the event is occurring. Contact information is listed below. For a description of the geographical area of each Coast Guard Sector—Captain of the Port zone, please see subpart 3.25 of this chapter.

(1) Coast Guard Sector Delaware Bay—Captain of the Port Zone, Philadelphia, Pennsylvania: (215) 271–4944.

(2) Coast Guard Sector Baltimore—Captain of the Port Zone, Baltimore, Maryland: (410) 576–2525.

(3) Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(4) Coast Guard Sector North Carolina—Captain of the Port Zone North Carolina: (877) 229–0770 or (910) 772–2200.

(e) *Application for marine events.* The application requirements of § 100.15 of this part apply to all events listed in the Table to § 100.501. For information on applying for a marine event, contact the Captain of the Port for the area in which the event will occur, at the phone numbers listed above.

TABLE TO § 100.501

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.]

Number	Date	Event	Sponsor	Location
(a.) Coast Guard Sector Delaware Bay—COTP Zone				
1	June—1st Sunday	Atlantic County Day at the Bay.	Atlantic County, New Jersey.	The waters of Great Egg Harbor Bay, adjacent to Somers Point, New Jersey, bounded by a line drawn along the following boundaries: The area is bounded to the north by the shoreline along John F. Kennedy Park and Somers Point, New Jersey; bounded to the east by the State Route 52 bridge; bounded to the south by a line that runs along latitude 39°18′00″ N; and bounded to the west by a line that runs along longitude 074°37′00″ W.
2	June—3rd Saturday	Annual Escape from Fort Delaware Triathlon.	Escape from Fort Delaware Triathlon, Inc.	All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points: Latitude 39°36′35.7″ N, longitude 075°35′25.6″ W, to latitude 39°34′57.3″ N, longitude 075°33′23.1″ W, to latitude 39°34′11.9″ N, longitude 075°34′28.6″ W, to latitude 39°35′52.4″ N, longitude 075°36′33.9″ W.
3	June—Last Saturday	Westville Parade of Lights.	Borough of Westville and Westville Power Boat.	All waters of Big Timber Creek in Westville, NJ from shoreline to shoreline bounded on the south from the Route 130 Bridge and to the north by the entrance of the Delaware River.
4	July—3rd Sunday	OPA Atlantic City Grand Prix.	Offshore Performance Assn. (OPA).	The waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: Southeasterly from a point along the shoreline at latitude 39°21′50″ N, longitude 074°24′37″ W, to latitude 39°20′40″ N, longitude 074°23′50″ W, thence southwesterly to latitude 39°19′33″ N, longitude 074°26′52″ W, thence northwesterly to a point along the shoreline at latitude 39°20′43″ N, longitude 074°27′40″ W, thence northeasterly along the shoreline to latitude 39°21′50″ N, longitude 074°24′37″ W.
5	July—On or about July 4th.	U.S. holiday celebrations	City of Philadelphia	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
6	August—2nd Friday, Saturday and Sunday.	Point Pleasant OPA/NJ Offshore Grand Prix.	Offshore Performance Association (OPA) and New Jersey Offshore Racing Assn.	The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Normandy Beach, NJ at latitude 40°00′00″ N, longitude 074°03′30″ W, thence easterly to latitude 39°59′40″ N, longitude 074°02′00″ W, thence southwesterly to latitude 39°56′35″ N, longitude 074°03′00″ W, thence westerly to a position near the Seaside Heights Pier at latitude 39°56′35″ N, longitude 074°04′15″ W, thence northerly along the shoreline to the point of origin.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.]

Number	Date	Event	Sponsor	Location
7	July—3rd Wednesday and Thursday.	New Jersey Offshore Grand Prix.	Offshore Performance Assn. & New Jersey Offshore Racing Assn.	The waters of the Manasquan River from the New York and Long Branch Railroad to Manasquan Inlet, together with all of the navigable waters of the United States from Asbury Park, New Jersey, latitude 40°14′00″ N; southward to Seaside Park, New Jersey latitude 39°55′00″ N, from the New Jersey shoreline seaward to the limits of the Territorial Sea. The race course area extends from Asbury Park to Seaside Park from the shoreline, seaward to a distance of 8.4 nautical miles.
8	August—4th Wednesday	Thunder Over the Boardwalk Air show.	Atlantic City Chamber of Commerce.	The waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: Southeasterly from a point along the shoreline at latitude 39°21′31″ N, longitude 074°25′04″ W, thence to latitude 39°21′08″ N, longitude 074°24′48″ W, thence southwesterly to latitude 39°20′16″ N, longitude 074°27′17″ W, thence northwesterly to a point along the shoreline at latitude 39°20′44″ N, longitude 074°27′31″ W, thence northeasterly along the shoreline to latitude 39°21′31″ N, longitude 074°25′04″ W.
9	September—3rd Saturday.	Annual Escape from Fort Delaware Triathlon.	Escape from Fort Delaware Triathlon, Inc.	All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points: Latitude 39°36′35.7″ N, longitude 075°35′25.6″ W, to latitude 39°34′57.3″ N, longitude 075°33′23.1″ W, to latitude 39°34′11.9″ N, longitude 075°34′28.6″ W, to latitude 39°35′52.4″ N, longitude 075°36′33.9″ W.
10	September—last Friday, Saturday and Sunday; October—first Friday, Saturday and Sunday.	Sunset Lake Hydrofest	Sunset Lake Hydrofest Assn.	All waters of Sunset Lake, New Jersey, from shoreline to shoreline, south of latitude 38°58′32″ N.
11	October—2nd Saturday and Sunday.	The Liberty Grand Prix	Offshore Performance Assn. (OPA).	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
12	October—1st Monday (Columbus Day).	U.S. holiday celebrations	City of Philadelphia	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
13	December—On December 31st (New Year's Eve).	U.S. holiday celebrations	City of Philadelphia	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
(b.) Coast Guard Sector Baltimore—COTP Zone				
1	March—4th or last Saturday; or April—1st Saturday.	Safety at Sea Seminar.	U.S. Naval Academy	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N, longitude 076°31′05.2″ W, thence to the north shoreline at latitude 39°00′54.7″ N, longitude 076°30′44.8″ W, this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N, longitude 076°28′49″ W, thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58′1.9″ N, longitude 076°28′1.7″ W, thence northeast to Greenbury Point at latitude 38°58′29″ N, longitude 076°27′16″ W.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.]

Number	Date	Event	Sponsor	Location
2	March—last Friday, Saturday and Sunday; April and May—every Friday, Saturday and Sunday.	USNA Crew Races.	U.S. Naval Academy	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N, longitude 076°31′05.2″ W, thence to the north shoreline at latitude 39°00′54.7″ N, longitude 076°30′44.8″ W, this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N, longitude 076°28′49″ W, thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58′1.9″ N, longitude 076°28′1.7″ W, thence northeast to Greenbury Point at latitude 38°58′29″ N, longitude 076°27′16″ W.
3	April—2nd Saturday	St. Mary's Seahawk Sprint.	St. Mary's College of Maryland.	All waters of the St. Mary's River, from shoreline to shoreline, bounded to the south by a line at latitude 38°10′05″ N, and bounded to the north by a line at latitude 38°12′00″ N.
4	May—1st Sunday	Nanticoke River Swim and Triathlon.	Nanticoke River Swim and Triathlon, Inc.	All waters of the Nanticoke River, including Bivalve Channel and Bivalve Harbor, bounded by a line drawn from a point on the shoreline at latitude 38°18′00″ N, longitude 075°54′00″ W, thence westerly to latitude 38°18′00″ N, longitude 075°55′00″ W, thence northerly to latitude 38°20′00″ N, longitude 075°53′48″ W, thence easterly to latitude 38°19′42″ N, longitude 075°52′54″ W.
5	May—Saturday before Memorial Day.	Chestertown Tea Party Re-enactment Festival.	Chestertown Tea Party Festival.	All waters of the Chester River, within a line connecting the following positions: Latitude 39°12′27″ N, longitude 076°03′46″ W; thence to latitude 39°12′19″ N, longitude 076°03′53″ W; thence to latitude 39°12′15″ N, longitude 076°03′41″ W; thence to latitude 39°12′26″ N, longitude 076°03′38″ W; thence to the point of origin at latitude 39°12′27″ N, longitude 076°03′46″ W.
6	May—3rd Friday, Saturday and Sunday.	Dragon Boat Races at Thompson Boathouse, Georgetown, Washington, DC.	Dragon Boat Festival, Inc.	The waters of the Upper Potomac River, Washington, DC, from shoreline to shoreline, bounded upstream by the Francis Scott Key Bridge and downstream by the Roosevelt Memorial Bridge.
7	May—Tuesday and Wednesday before Memorial Day (observed).	Blue Angels Air Show	U.S. Naval Academy	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N, longitude 076°31′05.2″ W, thence to the north shoreline at latitude 39°00′54.7″ N, longitude 076°30′44.8″ W, this line is approximately 1,300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N, longitude 076°28′49″ W, thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58′1.9″ N, longitude 076°28′1.7″ W, thence northeast to Greenbury Point at latitude 38°58′29″ N, longitude 076°27′16″ W.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.]

Number	Date	Event	Sponsor	Location
8	June—2nd Sunday	The Great Chesapeake Bay Bridges Swim Races and Chesapeake Challenge One Mile Swim.	Great Chesapeake Bay Swim, Inc.	The waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge shore to shore 500 yards north of the north span of the bridge from the western shore at latitude 39°00′36″ N, longitude 076°23′05″ W and the eastern shore at latitude 38°59′14″ N, longitude 076°20′00″ W, and 500 yards south of the south span of the bridge from the western shore at latitude 39°00′16″ N, longitude 076°24′30″ W and the eastern shore at latitude 38°58′38.5″ N, longitude 076°20′06″ W.
9	June—3rd, 4th or last Saturday or July—2nd or 3rd Saturday.	Maryland Swim for Life	District of Columbia Aquatics Club.	The waters of the Chester River from shoreline to shoreline, bounded on the south by a line drawn at latitude 39°10′16″ N, near the Chester River Channel Buoy 35 (LLN–26795) and bounded on the north at latitude 39°12′30″ N by the Maryland S.R. 213 Highway Bridge.
10	June—last Saturday and Sunday.	Bo Bowman Memorial—Sharptown Regatta.	Virginia/Carolina Racing Assn.	All waters of the Nanticoke River, near Sharptown, Maryland, between Maryland S.R. 313 Highway Bridge and Nanticoke River Light 43 (LLN–24175), bounded by a line drawn between the following points: southeasterly from latitude 38°32′46″ N, longitude 075°43′14″ W, to latitude 38°32′42″ N, longitude 075°43′09″ W, thence northeasterly to latitude 38°33′04″ N, longitude 075°42′39″ W, thence northwesterly to latitude 38°33′09″ N, longitude 075°42′44″ W, thence southwesterly to latitude 38°32′46″ N, longitude 075°43′14″ W.
11	June—3rd, 4th or last Saturday and Sunday or August—1st Saturday and Sunday.	Thunder on the Narrows	Kent Narrows Racing Assn.	All waters of Prospect Bay enclosed by the following points: latitude 38°57′52.0″ N, longitude 076°14′48.0″ W, to latitude 38°58′02.0″ N, longitude 076°15′05.0″ W, to latitude 38°57′38.0″ N, longitude 076°15′29.0″ W, to latitude 38°57′28.0″ N, longitude 076°15′23.0″ W, to latitude 38°57′52.0″ N, longitude 076°14′48.0″ W.
12	Labor Day weekend—Saturday and Sunday, or Monday.	Ragin on the River	Port Deposit, MD, Chamber of Commerce.	The waters of the Susquehanna River, adjacent to Port Deposit, Maryland, from shoreline to shoreline, bounded on the south by the U.S. I–95 fixed highway bridge, and bounded on the north by a line running southwesterly from a point along the shoreline at latitude 39°36′22″ N, longitude 076°07′08″ W, thence to latitude 39°36′00″ N, longitude 076°07′46″ W.
13	September—2nd Saturday or the Saturday after Labor Day.	Dragon Boat Races in the Inner Harbor.	Associated Catholic Charities, Inc.	The waters of the Patapsco River, Baltimore, MD, Inner Harbor from shoreline to shoreline, bounded on the east by a line drawn along longitude 076°36′30″ W.
14	June—3rd, 4th or last Saturday or Sunday.	Baltimore Dragon Boat Challenge.	Baltimore Dragon Boat Club.	The waters of the Patapsco River, Northwest Harbor, in Baltimore, MD, from shoreline to shoreline, within an area bounded on the east by a line drawn along longitude 076°35′ W and bounded on the west by a line drawn along longitude 076°36′.
15	September—4th or last Saturday and Sunday.	Cambridge Offshore Challenge.	Chesapeake Bay Powerboat Association.	All waters of the Choptank River, from shoreline to shoreline, bounded to the west by the Route 50 Bridge and bounded to the east by a line drawn along longitude 076° W, between Goose Point, MD and Oystershell Point, MD.
16	September—4th or last Saturday.	Chesapeakeman Ultra Triathlon.	Columbia Triathlon Assn. Inc.	All waters of the Choptank River within 200 yards either side of a line drawn northwesterly from a point on the shoreline at latitude 38°33′45″ N, longitude 076°02′38″ W, thence to latitude 38°35′06″ N, longitude 076°04′42″ W, a position located at Great Marsh Park, Cambridge, MD.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.]

Number	Date	Event	Sponsor	Location
17	October—last Saturday or November—1st Saturday.	Tug of War	City of Annapolis	The waters of Spa Creek from shoreline to shoreline, extending 400 feet from either side of a rope spanning Spa Creek from a position at latitude 38°58′36.9″ N, longitude 076°29′03.8″ W on the Annapolis shoreline to a position at latitude 38°58′26.4″ N, longitude 076°28′53.7″ W on the Eastport shoreline.
18	December—2nd Saturday.	Eastport Yacht Club Boat Parade.	Eastport Yacht Club	The approaches to Annapolis Harbor, the waters of Spa Creek, and the Severn River, shore to shore, bounded on the south by a line drawn from Carr Point, at latitude 38°58′58.0″ N, longitude 076°27′40.0″ W, thence to Horn Point Warning Light (LLNR 17935), at 38°58′24.0″ N, longitude 076°28′10.0″ W, thence to Horn Point, at 38°58′20.0″ N, longitude 076°28′27.0″ W, and bounded on the north by the State Route 450 Bridge.
19	Memorial Day weekend—Thursday, Friday, Saturday and Sunday, or Labor Day weekend—Thursday, Friday, Saturday and Sunday.	Air Expo	U.S. Naval Air Station Patuxent River, MD.	All waters of the lower Patuxent River, near Solomons, Maryland, located between Fishing Point and the base of the break wall marking the entrance to the East Seaplane Basin at Naval Air Station Patuxent River, within an area bounded by a line connecting position latitude 38°17′39″ N, longitude 076°25′47″ W; thence to latitude 38°17′47″ N, longitude 076°26′00″ W; thence to latitude 38°18′09″ N, longitude 076°25′40″ W; thence to latitude 38°18′00″ N, longitude 076°25′25″ W, located along the shoreline at U.S. Naval Air Station Patuxent River, Maryland, and All waters of the lower Patuxent River, near Solomons, Maryland, located between Hog Point and Cedar Point, within an area bounded by a line drawn from a position at latitude 38°18′41″ N, longitude 076°23′43″ W; to latitude 38°18′16″ N, longitude 076°22′35″ W; thence to latitude 38°18′12″ N, longitude 076°22′37″ W; thence to latitude 38°18′36″ N, longitude 076°23′46″ W, located adjacent to the shoreline at U.S. Naval Air Station Patuxent River, Maryland.
(c.) Coast Guard Sector Hampton Roads—COTP Zone				
1	April—3rd Saturday and Sunday.	Hydroplane races	Virginia Boat Racing Assn.	All waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: latitude 36°50′06″ N, longitude 076°22′27″ W, thence to latitude 36°50′06″ N, longitude 076°21′57″ W, thence to latitude 36°50′15″ N, longitude 076°21′55.8″ W, thence to latitude 36°50′15″ N, longitude 076°22′27″ W, thence to point of origin.
2	April—4th Friday and Saturday.	Crawford Bay Crew Classic.	Port Events, Inc.	The waters of the Southern Branch, Elizabeth River from shoreline to shoreline bounded to the south by a line drawn from latitude 36°49′11.0″ N, longitude 076°17′33.0″ W to latitude 36°49′11.0″ N, longitude 076°17′22.0″ W and bounded to the north by a line drawn from latitude 36°50′17.5″ N, longitude 076°17′45.0″ W to latitude 36°50′17.5″ N, longitude 076°17′30.0″ W.
3	April—4th Saturday and Sunday.	Wet Spring Regatta	Windsurfing Enthusiasts of Tidewater.	The waters of Willoughby Bay contained within the following coordinates: latitude 36°58′36″ N, longitude 076°18′42″ W, to latitude 36°58′00″ N, longitude 076°18′00″ W, to latitude 36°57′49″ N, longitude 076°18′14″ W, to latitude 36°57′36″ N, longitude 076°17′55″ W, to latitude 36°57′26″ N, longitude 076°18′06″ W, to latitude 36°58′15″ N, longitude 076°19′08″ W, to latitude 36°58′36″ N, longitude 076°18′42″ W.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.]

Number	Date	Event	Sponsor	Location
4	May—2nd Friday and Saturday.	Hydroplane races	Virginia Boat Racing Assn.	*Regulated area* includes all waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: latitude 36°50′06″ N, longitude 076°22′27″ W, thence to latitude 36°50′06″ N, longitude 076°21′57″ W, thence to latitude 36°50′15″ N, longitude 076°21′55.8″ W, thence to latitude 36°50′15″ N, longitude 076°22′27″ W, thence to point of origin.
5	May—last Friday, Saturday and Sunday or June—1st Friday, Saturday and Sunday.	Blackbeard Festival	Hampton Event Makers	The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C&O Railroad Bridge and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03.0″ N, longitude 76°20′26.0″ W, to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01′01.5″ N, longitude 76°20′32.0″ W. Spectator Vessel Anchorage Areas—Area A: Located in the upper reaches of the Hampton River, bounded to the south by a line drawn from the western shore at latitude 37°01′48.0″ N, longitude 76°20′22.0″ W, across the river to the eastern shore at latitude 37°01′44.0″ N, longitude 76°20′13.0″ W, and to the north by the C&O Railroad Bridge. The anchorage area will be marked by orange buoys. Area B: Located on the eastern side of the channel, in the Hampton River, south of the Queen Street Bridge, near the Riverside Health Center. Bounded by the shoreline and a line drawn between the following points: Latitude 37°01′26.0″ N, longitude 76°20′24.0″ W, latitude 37°01′22.0″ N, longitude 76°20′26.0″ W, and latitude 37°01′22.0″ N, longitude 76°20′23.0″ W. The anchorage area will be marked by orange buoys.
6	June—1st Friday, Saturday and Sunday or 2nd Friday, Saturday and Sunday.	Norfolk Harborfest	Norfolk Festevents, Ltd.	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the easternmost pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.]

Number	Date	Event	Sponsor	Location
7	May—Last Saturday and Sunday.	Ocean City Maryland Offshore Grand Prix.	Offshore Performance Assn. Racing, LLC.	The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 38°25′42″ N, longitude 075°03′06″ W; thence east southeast to latitude 38°25′30″ N, longitude 075°02′12″ W, thence south southwest parallel to the Ocean City shoreline to latitude 38°19′12″ N, longitude 075°03′48″ W; thence west northwest to the shoreline at latitude 38°19′30″ N, longitude 075°05′00″ W. The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Ocean City, MD at latitude 38°22′25.2″ N, longitude 075°03′49.4″ W, thence easterly to latitude 38°22′00.4″ N, longitude 075°02′34.8″ W, thence southwesterly to latitude 38°19′35.9″ N, longitude 075°03′35.4″ W, thence westerly to a position near the shoreline at latitude 38°20′05″ N, longitude 075°04′48.4″ W, thence northerly along the shoreline to the point of origin.
8	June—3rd Saturday	Cock Island Race	Ports Events, Inc.	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.
9	June—last Saturday	RRBA Spring Radar Shootout.	Rappahannock River Boaters Association (RRBA).	The waters of the Rappahannock River, adjacent to Layton, VA, from shoreline to shoreline, bounded on the west by a line running along longitude 076°58′30″ W, and bounded on the east by a line running along longitude 076°56′00″ W.
10	July—3rd Sunday	Watermen's Heritage Festival Workboat Races.	Watermen's Museum of Yorktown, VA.	The waters of the York River, Yorktown, Virginia, bounded on the west by a line drawn along longitude 076°31′25″ W, bounded on the east by a line drawn along longitude 076°30′55″ W, bounded on the south by the shoreline and bounded on the north by a line drawn parallel and 400 yards north of the southern shoreline.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.]

Number	Date	Event	Sponsor	Location
11	July—last Wednesday and following Friday.	Pony Penning Swim	Chincoteague Volunteer Fire Department.	The waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55′01″ N, longitude 075°22′40″ W, to latitude 37°54′50″ N, longitude 075°22′46″ W, and to the west by a line drawn from latitude 37°54′54.0″ N, longitude 075°23′00″ W, to latitude 37°54′49″ N, longitude 075°22′49″ W.
12	August—1st Friday, Saturday and Sunday.	Power boat race	East Coast Boat Racing Club of New Jersey.	The waters of the Chesapeake Bay, along the shoreline adjacent to Cape Charles, Virginia, to and including waters up to 300 yards offshore, parallel with the Cape Charles Beach shoreline in this area. The area is bounded on the south by a line running northwesterly from the Cape Charles shoreline at latitude 37°16′.2″ N, longitude 076°01′28.5″ W, to a point offshore approximately 300 yards at latitude 37°16′3.4″ N, longitude 076°01′36.6″ W, and bounded on the north by a line running northwesterly from the Cape Charles shoreline at latitude 37°16′26.2″ N, longitude 076°01′14″ W, to a point offshore approximately 300 yards at latitude 37°16′28.9″ N, longitude 076°01′24.1″ W.
13	August—2nd Friday, Saturday and Sunday.	Hampton Cup Regatta ...	Virginia Boat Racing Association.	The waters of Mill Creek, adjacent to Fort Monroe, Hampton, Virginia, enclosed by the following boundaries: To the north, a line drawn along latitude 37°01′00″ N, to the east a line drawn along longitude 076°18′30″ W, to the south a line parallel with the shoreline adjacent to Fort Monroe, and the west boundary is parallel with the Route 258—Mercury Boulevard Bridge.
14	September—2nd Friday and Saturday.	Ocean City, MD power boat race.	Offshore Performance Assn. Racing, LLC.	The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 38°25′42″ N, longitude 075°03′06″ W; thence east southeast to latitude 38°25′30″ N, longitude 075°02′12″ W, thence south southwest parallel to the Ocean City shoreline to latitude 38°19′12″ N, longitude 075°03′48″ W; thence west northwest to the shoreline at latitude 38°19′30″ N, longitude 075°05′00″ W. The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Ocean City, MD at latitude 38°22′25.2″ N, longitude 075°03′49.4″ W, thence easterly to latitude 38°22′00.4″ N, longitude 075°02′34.8″ W, thence southwesterly to latitude 38°19′35.9″ N, longitude 075°03′35.4″ W, thence westerly to a position near the shoreline at latitude 38°20′05″ N, longitude 075°04′48.4″ W, thence northerly along the shoreline to the point of origin.
15	September—2nd Friday, Saturday and Sunday.	Hampton Bay Days Festival.	Hampton Bay Days Inc.	The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C & O Railroad Bridge and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03.0″ N, longitude 076°20′26.0″ W, to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01′01.5″ N, longitude 076°20′32.0″ W.
16	October—1st Saturday and Sunday.	Virginia Boat Racing Association.	Clarksville Hydroplane Challenge.	The waters of the John H. Kerr Reservoir, adjacent to the State Route 15 Highway Bridge and Occoneechee State Park, Clarksville, Virginia, from shoreline to shoreline, bounded on the south by a line running northeasterly from a point along the shoreline at latitude 36°37′14″ N, longitude 078°32′46.5″ W, thence to latitude 36°37′39.2″ N, longitude 078°32′08.8″ W, and bounded on the north by the State Route 15 Highway Bridge.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.]

Number	Date	Event	Sponsor	Location
17	October—2nd Friday	U.S. Navy Fleet Week Celebration.	U.S. Navy	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.
18	October—2nd Saturday and Sunday.	Hydroplane races	Virginia Boat Racing Assn.	*Regulated area* includes all waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: latitude 36°50′06″ N, longitude 076° 22′27″ W, thence to latitude 36°50′06″ N, longitude 076° 21′57″ W, thence to latitude 36°50′15″ N, longitude 076° 21′55.8″ W, thence to latitude 36°50′15″ N, longitude 076° 22′27″ W, thence to point of origin.
19	October—2nd Sunday	Poquoson Seafood Festival Workboat Races.	City of Poquoson	The waters of the Back River, Poquoson, Virginia, bounded on the north by a line drawn along latitude 37°06′30″ N, bounded on the south by a line drawn along latitude 37°06′15″ N, bounded on the east by a line drawn along longitude 076°18′52″ W and bounded on the west by a line drawn along longitude 076°19′30″ W.
20	October—last Saturday and Sunday.	Hampton Roads Sailboard Classic.	Windsurfing Enthusiasts of Tidewater.	The waters of Willoughby Bay contained within the following coordinates: latitude 36°58′36″ N, longitude 076°18′42″ W, to latitude 36°58′00″ N, longitude 076°18′00″ W, to latitude 36°57′49″ N, longitude 076°18′14″ W, to latitude 36°57′36″ N, longitude 076°17′55″ W, to latitude 36°57′26″ N, longitude 076°18′06″ W, to latitude 36°58′15″ N, longitude 076°19′08″ W, to latitude 36°58′36″ N, longitude 076°18′42″ W.
21	November—1st Friday and Saturday.	International Search and Rescue Competition.	U.S. Coast Guard and Canadian Auxiliaries.	The waters of the Southern Branch of the Elizabeth River including the North Ferry Landing, from shoreline to shoreline, bounded to the north by a line drawn along Latitude 36°50′23″ N and bounded to the south by a line drawn along Latitude 36°50′12″ N.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.]

Number	Date	Event	Sponsor	Location
22	November—4th or last Saturday.	Holidays in the City	Norfolk Festevents, Ltd ..	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.
23	August—3rd Saturday and Sunday or 4th Saturday and Sunday.	Mattaponi Drag Boat Race.	Mattaponi Volunteer Rescue Squad and Dive Team.	All waters of Mattaponi River immediately adjacent to Rainbow Acres Campground, King and Queen County, Virginia. The regulated area includes a section of the Mattaponi River approximately three-quarter mile long and bounded in width by each shoreline, bounded to the east by a line that runs parallel along longitude 076°52′43″ W, near the mouth of Mitchell Hill Creek, and bounded to the west by a line that runs parallel along longitude 076°53′41″ W just north of Wakema, Virginia.
(d.) Coast Guard Sector North Carolina—COTP Zone				
1	June—1st Saturday and Sunday.	Carolina Cup Regatta	Virginia Boat Racing Assn.	The waters of the Pasquotank River, adjacent to Elizabeth City, NC, from shoreline to shoreline, bounded on the west by the Elizabeth City Draw Bridge and bounded on the east by a line originating at a point along the shoreline at latitude 36°17′54″ N, longitude 076°12′00″ W, thence southwesterly to latitude 36°17′35″ N, longitude 076°12′18″ W at Cottage Point.
2	August—1st Friday, Saturday and Sunday.	SBIP—Fountain Powerboats Kilo Run and Super Boat Grand Prix.	Super Boat International Productions (SBIP), Inc.	The waters of the Pamlico River including Chocowinity Bay, from shoreline to shoreline, bounded on the south by a line running northeasterly from Camp Hardee at latitude 35°28′23″ N, longitude 076°59′23″ W, to Broad Creek Point at latitude 35°29′04″ N, longitude 076°58′44″ W, and bounded on the north by the Norfolk Southern Railroad Bridge.

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.]

Number	Date	Event	Sponsor	Location
3	September—3rd and or 4th or last Sunday.	Crystal Coast Super Boat Grand Prix.	Super Boat International Productions Inc.	The waters of Bogue Sound, adjacent to Morehead City, NC, from the southern tip of Sugar Loaf Island approximate position latitude 34°42′55″ N, longitude 076°42′48″ W, thence westerly to Morehead City Channel Day beacon 7 (LLNR 38620), thence southwest along the channel line to Bogue Sound Light 4 (LLRN 38770), thence southerly to Causeway Channel Day beacon 2 (LLNR 38720), thence southeasterly to Money Island Day beacon 1 (LLNR 38645), thence easterly to Eight and One Half Marina Day beacon 2 (LLNR 38685), thence easterly to the western most shoreline of Brant Island approximate position latitude 34°42′36″ N, longitude 076°42′11″ W, thence northeasterly along the shoreline to Tombstone Point approximate position latitude 34°42′14″ N, longitude 076°41′20″ W, thence southeasterly to the east end of the pier at Coast Guard Sector North Carolina approximate position latitude 34°42′00″ N, longitude 076°40′52″ W, thence easterly to Morehead City Channel Buoy 20 (LLNR 29427), thence northerly to Beaufort Harbor Channel LT 1BH (LLNR 34810), thence northwesterly to the southern tip of Radio Island approximate position latitude 34°42′22″ N, longitude 076°40′52″ W, thence northerly along the shoreline to approximate position latitude 34°43′00″ N, longitude 076°41′25″ W, thence westerly to the North Carolina State Port Facility, thence westerly along the State Port to the southwest corner approximate position latitude 34°42′55″ N, longitude 076°42′12″ W, thence westerly to the southern tip of Sugar Loaf Island the point of origin.
4	September—3rd, 4th or last Saturday; October—last Saturday; November—1st and or 2nd Saturday.	Wilmington YMCA Triathlon.	Wilmington, NC, YMCA	The waters of, and adjacent to, Wrightsville Channel, from Wrightsville Channel Day beacon 14 (LLNR 28040), located at 34°12′18″ N, longitude 077°48′10″ W, to Wrightsville Channel Day beacon 25 (LLNR 28080), located at 34°12′51″ N, longitude 77°48′53″ W.

Dated: December 29, 2011.

William D. Lee,

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

[FR Doc. 2012–916 Filed 1–18–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0638; FRL–9613–7]

Approval and Disapproval and Promulgation of Implementation Plans; Texas; Infrastructure and Interstate Transport Requirements for the 1997 Ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS

Correction

In **Federal Register** correction rule document C1–2011–33253 appearing on page 1873 in the issue of Thursday, January 12, 2012, the correction should have read as follows:

§ 52.2270 [Corrected]

■ 1. On page 81392, in § 52.2270(c), in the table appearing at the bottom of the page, in the entry under the column titled ''PA approval date'', ''12/28/2012'' should read ''2/28/2011''.

■ 2. On page 81393, in § 52.2270(c) and (e), in both tables appearing on this page, in the two entries under the columns titled ''EPA approval date'', ''12/28/2012'' should read ''12/28/2011''.

[FR Doc. C2–2011–33253 Filed 1–18–12; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0536; FRL–9618–2]

Revisions to the California State Implementation Plan, Placer County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the Placer County Air Pollution Control District (PCAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on September 6, 2011 and concerns oxides of nitrogen (NO_X) emissions from biomass fuel-fired boilers. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources and directs California to correct rule deficiencies.

DATES: *Effective Date:* This rule is effective on *February 21, 2012.*

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0536 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or 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, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov*.

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

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I. Proposed Action
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I. Proposed Action

On September 6, 2011 (76 FR 54993), EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule #	Rule title	Amended	Submitted
PCAPCD	233	Biomass Boilers	12/10/09	05/17/10

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. Specifically, PCAPCD did not demonstrate that the NO_X emission limits for biomass boilers found in Section 301 implement RACT.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rule has been adopted by the PCAPCD, and EPA's final limited disapproval does not prevent the local agency from enforcing it. The limited disapproval also does 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.*

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

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

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

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State,

local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

E. Executive Order 13132, Federalism

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

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

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

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

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

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

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

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

Executive Order (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.

K. Congressional Review Act

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 rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on *February 21, 2012.*

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *March 19, 2012.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: January 4, 2012.

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 paragraphs (c)(379)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(379) * * *

(i) * * *

(D) Placer County Air Pollution Control District

(*1*) Rule 233, ''Biomass Boilers,'' amended on December 10, 2009.

* * * * *

[FR Doc. 2012–841 Filed 1–18–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–8213]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Pennsylvania:				
Antrim, Township of, Franklin County	421233	March 26, 1974, Emerg; April 24, 1981, Reg; January 18, 2012, Susp.	Jan. 18, 2012	Jan. 18, 2012.
Benezette, Township of, Elk County	422612	August 8, 1979, Emerg; June 1, 1987, Reg; January 18, 2012, Susp.	.....do	Do.
Bessemer, Borough of, Lawrence County.	422627	August 1, 1975, Emerg; July 9, 1982, Reg; January 18, 2012, Susp.	.....do	Do.
Chambersburg, Borough of, Franklin County.	420469	February 2, 1973, Emerg; July 17, 1978, Reg; January 18, 2012, Susp.	.....do	Do.
Ellport, Borough of, Lawrence County	422462	March 9, 1976, Emerg; November 17, 1978, Reg; January 18, 2012, Susp.	.....do	Do.
Ellwood City, Borough of, Lawrence County.	420567	October 3, 1974, Emerg; June 1, 1982, Reg; January 18, 2012, Susp.	.....do	Do.
Enon Valley, Borough of, Lawrence County.	422463	August 11, 1975, Emerg; August 3, 1984, Reg; January 18, 2012, Susp.	.....do	Do.
Fannett, Township of, Franklin County	422424	February 13, 1976, Emerg; October 29, 1982, Reg; January 18, 2012, Susp.	.....do	Do.
Fox, Township of, Elk County	421608	December 19, 1975, Emerg; November 2, 1990, Reg; January 18, 2012, Susp.	.....do*	Do.
Greencastle, Borough of, Franklin County.	420470	April 24, 1975, Emerg; September 30, 1976, Reg; January 18, 2012, Susp.	.....do	Do.
Greene, Township of, Franklin County	421649	June 18, 1974, Emerg; November 2, 1990, Reg; January 18, 2012, Susp.	.....do	Do.
Guilford, Township of, Franklin County	421650	January 20, 1976, Emerg; June 18, 1990, Reg; January 18, 2012, Susp.	.....do	Do.
Hamilton, Township of, Franklin County	421651	September 17, 1974, Emerg; June 18, 1990, Reg; January 18, 2012, Susp.	.....do	Do.
Hickory, Township of, Lawrence County	421792	April 7, 1975, Emerg; August 2, 1982, Reg; January 18, 2012, Susp.	.....do	Do.
Highland, Township of, Elk County	421609	January 29, 1976, Emerg; December 1, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Horton, Township of, Elk County	421610	June 12, 1980, Emerg; December 1, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Jay, Township of, Elk County	421611	January 13, 1976, Emerg; December 1, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Johnsonburg, Borough of, Elk County	420443	February 2, 1973, Emerg; September 29, 1978, Reg; January 18, 2012, Susp.	.....do	Do.
Jones, Township of, Elk County	421612	January 27, 1976, Emerg; December 1, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Letterkenny, Township of, Franklin County.	422425	April 30, 1979, Emerg; September 17, 1982, Reg; January 18, 2012, Susp.	.....do	Do.
Little Beaver, Township of, Lawrence County.	422464	December 22, 1975, Emerg; May 1, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Lurgan, Township of, Franklin County	421652	October 28, 1975, Emerg; September 1, 1978, Reg; January 18, 2012, Susp.	.....do	Do.
Mahoning, Township of, Lawrence County.	421793	April 29, 1975, Emerg; February 18, 1983, Reg; January 18, 2012, Susp.	.....do	Do.
Mercersburg, Borough of, Franklin County.	420471	August 6, 1975, Emerg; March 1, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Metal, Township of, Franklin County	421653	January 16, 1976, Emerg; September 1, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Millstone, Township of, Elk County	421613	March 8, 1977, Emerg; December 1, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Mont Alto, Borough of, Franklin County	420472	July 9, 1975, Emerg; July 16, 1990, Reg; January 18, 2012, Susp.	.....do	Do.
Montgomery, Township of, Franklin County.	422426	August 1, 1979, Emerg; August 1, 1986, Reg; January 18, 2012, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Neshannock, Township of, Lawrence County.	421794	November 22, 1974, Emerg; May 17, 1982, Reg; January 18, 2012, Susp.	.....do	Do.
New Castle, City of, Lawrence County	420568	August 31, 1973, Emerg; August 15, 1978, Reg; January 18, 2012, Susp.	.....do	Do.
New Wilmington, Borough of, Lawrence County.	420569	November 8, 1974, Emerg; August 3, 1984, Reg; January 18, 2012, Susp.	.....do	Do.
North Beaver, Township of, Lawrence County.	421795	March 2, 1977, Emerg; August 19, 1987, Reg; January 18, 2012, Susp.	.....do	Do.
Peters, Township of, Franklin County ...	421654	August 14, 1975, Emerg; September 1, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Plain Grove, Township of, Lawrence County.	421797	August 1, 1979, Emerg; August 3, 1984, Reg; January 18, 2012, Susp.	.....do	Do.
Pulaski, Township of, Lawrence County	421798	October 21, 1974, Emerg; December 31, 1982, Reg; January 18, 2012, Susp.	.....do	Do.
Quincy, Township of, Franklin County ..	421655	September 27, 1982, Emerg; July 16, 1990, Reg; January 18, 2012, Susp.	.....do	Do.
Ridgway, Borough of, Elk County	420444	September 1, 1972, Emerg; February 15, 1980, Reg; January 18, 2012, Susp.	.....do	Do.
Ridgway, Township of, Elk County	420445	May 15, 1973, Emerg; September 29, 1978, Reg; January 18, 2012, Susp.	.....do	Do.
Scott, Township of, Lawrence County ..	421799	July 23, 1974, Emerg; November 1, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Shenango, Township of, Lawrence County.	421029	January 28, 1974, Emerg; April 3, 1978, Reg; January 18, 2012, Susp.	.....do	Do.
Slippery Rock, Township of, Lawrence County.	422466	March 1, 1977, Emerg; November 1, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
South New Castle, Borough of, Lawrence County.	422467	February 18, 1976, Emerg; July 31, 1978, Reg; January 18, 2012, Susp.	.....do	Do.
Southampton, Township of, Franklin County.	421657	June 17, 1975, Emerg; May 15, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Spring Creek, Township of, Elk County	421614	March 8, 1977, Emerg; December 1, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
St. Marys, City of, Elk County	420446	October 25, 1973, Emerg; August 15, 1980, Reg; January 18, 2012, Susp.	.....do	Do.
St. Thomas, Township of, Franklin County.	421656	August 15, 1975, Emerg; July 16, 1990, Reg; January 18, 2012, Susp.	.....do	Do.
Taylor, Township of, Lawrence County	421800	July 30, 1975, Emerg; August 3, 1984, Reg; January 18, 2012, Susp.	.....do	Do.
Union, Township of, Lawrence County	421801	April 21, 1975, Emerg; November 5, 1982, Reg; January 18, 2012, Susp.	.....do	Do.
Volant, Borough of, Lawrence County ..	421790	July 23, 1975, Emerg; September 28, 1979, Reg; January 18, 2012, Susp.	.....do	Do.
Wampum, Borough of, Lawrence County.	421791	December 26, 1974, Emerg; August 3, 1984, Reg; January 18, 2012, Susp.	.....do	Do.
Warren, Township of, Franklin County ..	422427	February 17, 1976, Emerg; September 1, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Washington, Township of, Franklin County.	421658	July 1, 1975, Emerg; June 3, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Washington, Township of, Lawrence County.	422468	April 3, 1979, Emerg; September 24, 1984, Reg; January 18, 2012, Susp.	.....do	Do.
Wayne, Township of, Lawrence County	422469	June 27, 1975, Emerg; May 3, 1982, Reg; January 18, 2012, Susp.	.....do	Do.
Waynesboro, Borough of, Franklin County.	420473	May 4, 1973, Emerg; November 1, 1985, Reg; January 18, 2012, Susp.	.....do	Do.
Wilmington, Township of, Lawrence County.	421802	August 12, 1974, Emerg; June 1, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Region IV				
Mississippi:				
Doddsville, Town of, Sunflower County	280162	April 15, 1975, Emerg; July 17, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Drew, City of, Sunflower County	280163	June 5, 1973, Emerg; May 1, 1978, Reg; January 18, 2012, Susp.	.....do	Do.
Durant, City of, Holmes County	280074	April 1, 1974, Emerg; August 19, 1986, Reg; January 18, 2012, Susp.	.....do	Do.
Holmes County, Unincorporated Areas	280211	April 11, 1974, Emerg; September 15, 1989, Reg; January 18, 2012, Susp.	.....do	Do.
Moorhead, City of, Sunflower County ...	280166	May 24, 1973, Emerg; April 17, 1978, Reg; January 18, 2012, Susp.	.....do	Do.
Ruleville, Town of, Sunflower County ...	280167	May 14, 1973, Emerg; May 1, 1978, Reg; January 18, 2012, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Sunflower, Town of, Sunflower County	280168	May 14, 1973, Emerg; July 17, 1978, Reg; January 18, 2012, Susp.	.....do	Do.
Sunflower County, Unincorporated Areas.	280195	May 4, 1973, Emerg; September 28, 1979, Reg; January 18, 2012, Susp.	.....do	Do.
Region V				
Indiana:				
Boone County, Unincorporated Areas ..	180011	November 26, 1975, Emerg; September 16, 1982, Reg; January 18, 2012, Susp.	.....do	Do.
Cedar Lake, Town of, Lake County	180127	July 25, 1975, Emerg; March 15, 1982, Reg; January 18, 2012, Susp.	.....do	Do.
Crown Point, City of, Lake County	180128	January 31, 1975, Emerg; March 18, 1980, Reg; January 18, 2012, Susp.	.....do	Do.
Dyer, Town of, Lake County	180129	October 10, 1974, Emerg; May 15, 1984, Reg; January 18, 2012, Susp.	.....do	Do.
East Chicago, City of, Lake County	180130	February 26, 1975, Emerg; June 4, 1980, Reg; January 18, 2012, Susp.	.....do	Do.
Gary, City of, Lake County	180132	March 17, 1975, Emerg; March 16, 1981, Reg; January 18, 2012, Susp.	.....do	Do.
Griffith, Town of, Lake County	185175	February 26, 1971, Emerg; April 14, 1972, Reg; January 18, 2012, Susp.	.....do	Do.
Hammond, City of, Lake County	180134	December 10, 1974, Emerg; March 16, 1981, Reg; January 18, 2012, Susp.	.....do	Do.
Highland, Town of, Lake County	185176	May 21, 1971, Emerg; May 19, 1972, Reg; January 18, 2012, Susp.	.....do	Do.
Hobart, City of, Lake County	180136	February 14, 1975, Emerg; December 4, 1979, Reg; January 18, 2012, Susp.	.....do	Do.
Lake County, Unincorporated Areas	180126	July 25, 1973, Emerg; September 2, 1981, Reg; January 18, 2012, Susp.	.....do	Do.
Lake Station, City of, Lake County	180131	March 27, 1975, Emerg; September 5, 1979, Reg; January 18, 2012, Susp.	.....do	Do.
Lebanon, City of, Boone County	180013	June 25, 1975, Emerg; May 3, 1982, Reg; January 18, 2012, Susp.	.....do	Do.
Lowell, Town of, Lake County	180137	January 31, 1975, Emerg; December 4, 1979, Reg; January 18, 2012, Susp.	.....do	Do.
Merrillville, Town of, Lake County	180138	February 16, 1973, Emerg; October 15, 1981, Reg; January 18, 2012, Susp.	.....do	Do.
Munster, Town of, Lake County	180139	November 11, 1974, Emerg; May 16, 1983, Reg; January 18, 2012, Susp.	.....do	Do.
New Chicago, Town of, Lake County ...	180140	March 13, 1975, Emerg; January 2, 1980, Reg; January 18, 2012, Susp.	.....do	Do.
Schererville, Town of, Lake County	180142	March 17, 1975, Emerg; May 1, 1980, Reg; January 18, 2012, Susp.	.....do	Do.
Schneider, Town of, Lake County	180143	March 3, 1976, Emerg; August 1, 1980, Reg; January 18, 2012, Susp.	.....do	Do.
St. John, Town of, Lake County	180141	January 20, 1975, Emerg; November 1, 1979, Reg; January 18, 2012, Susp.	.....do	Do.
Thorntown, Town of, Boone County	180014	April 29, 1975, Emerg; July 21, 1978, Reg; January 18, 2012, Susp.	.....do	Do.
Whitestown, Town of, Boone County	180015	August 5, 1975, Emerg; April 5, 1988, Reg; January 18, 2012, Susp.	.....do	Do.
Whiting, City of, Lake County	180313	March 9, 1977, Emerg; March 6, 1981, Reg; January 18, 2012, Susp.	.....do	Do.
Winfield, Town of, Lake County	180515	N/A, Emerg; November 14, 1997, Reg; January 18, 2012, Susp.	.....do	Do.
Zionsville, Town of, Boone County	180016	May 2, 1975, Emerg; December 15, 1981, Reg; January 18, 2012, Susp.	.....do	Do.
Michigan: Higgins, Township of, Roscommon County.	261011	December 22, 1997, Emerg; N/A, Reg; January 18, 2012, Susp.	.....do	Do.
Region VI				
Oklahoma:				
Mooreland, Town of, Woodward County	400230	August 16, 1974, Emerg; June 19, 1985, Reg; January 18, 2012, Susp.	.....do	Do.
Woodward, City of, Woodward County	400232	April 30, 1974, Emerg; December 16, 1980, Reg; January 18, 2012, Susp.	.....do	Do.
Woodward County, Unincorporated Areas.	400500	June 29, 1990, Emerg; January 17, 1997, Reg; January 18, 2012, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: January 12, 2012.

David L. Miller,

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

[FR Doc. 2012–929 Filed 1–18–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–8211]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
West Virginia:				
Addison, Town of, Webster County	540204	May 13, 1975, Emerg; February 16, 1990, Reg; January 6, 2012, Susp.	Jan. 6, 2012	Jan. 6, 2012.
Camden-On-Gauley, Town of, Webster County.	540205	August 6, 1975, Emerg; August 24, 1984, Reg; January 6, 2012, Susp.	do	Do.
Cowen, Town of, Webster County	540206	August 18, 1975, Emerg; August 24, 1984, Reg; January 6, 2012, Susp.	do	Do.
Webster County, Unincorporated Areas	540203	December 2, 1975, Emerg; February 16, 1990, Reg; January 6, 2012, Susp.	do	Do.
Region IV				
Mississippi:				
Greene County, Unincorporated Areas	280271	July 9, 1976, Emerg; September 18, 1985, Reg; January 6, 2012, Susp.	do	Do.
Leakesville, Town of, Greene County	280057	March 23, 1976, Emerg; September 30, 1988, Reg; January 6, 2012, Susp.	do	Do.
McLain, Town of, Greene County	280058	November 12, 1974, Emerg; December 1, 1983, Reg; January 6, 2012, Susp.	do	Do.
Tennessee:				
Jasper, Town of, Marion County	475429	July 30, 1971, Emerg; February 26, 1972, Reg; January 6, 2012, Susp.	do	Do.
Kimball, Town of, Marion County	470116	July 1, 1975, Emerg; May 19, 1987, Reg; January 6, 2012, Susp.	do	Do.
Marion County, Unincorporated Areas	470114	October 23, 1973, Emerg; May 15, 1980, Reg; January 6, 2012, Susp.	do	Do.
New Hope, Town of, Marion County	470377	October 5, 1981, Emerg; September 27, 1985, Reg; January 6, 2012, Susp.	do	Do.
Powells Crossroads, Town of, Marion County.	470456	N/A, Emerg; May 7, 2009, Reg; January 6, 2012, Susp.	do	Do.
South Pittsburg, City of, Marion County	475447	July 9, 1971, Emerg; April 14, 1972, Reg; January 6, 2012, Susp.	do	Do.
Whitwell, City of, Marion County	470118	N/A, Emerg; July 10, 2009, Reg; January 6, 2012, Susp.	do	Do.
Region V				
Illinois:				
Bath, Village of, Mason County	170464	April 4, 1979, Emerg; January 5, 1984, Reg; January 6, 2012, Susp.	do	Do.
Havana, City of, Mason County	170465	July 23, 1981, Emerg; July 23, 1981, Reg; January 6, 2012, Susp.	do	Do.
Mason City, City of, Mason County	170466	December 12, 1975, Emerg; July 18, 1985, Reg; January 6, 2012, Susp.	do	Do.
Mason County, Unincorporated Areas	170463	January 19, 1977, Emerg; February 1, 1984, Reg; January 6, 2012, Susp.	do	Do.
Michigan:				
Alabaster, Township of, Iosco County	260249	November 20, 1973, Emerg; February 19, 1987, Reg; January 6, 2012, Susp.	do	Do.
Au Sable, Township of, Iosco County	260098	May 25, 1973, Emerg; January 6, 1988, Reg; January 6, 2012, Susp.	do	Do.
East Tawas, City of, Iosco County	260100	May 1, 1973, Emerg; September 30, 1977, Reg; January 6, 2012, Susp.	do	Do.
Oscoda, Township of, Iosco County	260101	May 15, 1973, Emerg; September 1, 1978, Reg; January 6, 2012, Susp.	do	Do.
Tawas City, City of, Iosco County	260102	July 23, 1973, Emerg; February 15, 1978, Reg; January 6, 2012, Susp.	do	Do.
Croswell, City of, Sanilac County	260515	October 13, 1976, Emerg; August 19, 1986, Reg; January 6, 2012, Susp.	do	Do.
Delaware, Township of, Sanilac County	260756	April 7, 1986, Emerg; December 18, 1986, Reg; January 6, 2012, Susp.	do	Do.
Forester, Township of, Sanilac County	260771	August 4, 1986, Emerg; September 18, 1987, Reg; January 6, 2012, Susp.	do	Do.
Lexington, Township of, Sanilac County	260718	March 4, 1980, Emerg; January 15, 1988, Reg; January 6, 2012, Susp.	do	Do.
Port Sanilac, Village of, Sanilac County	260779	September 26, 1986, Emerg; April 15, 1988, Reg; January 6, 2012, Susp.	do	Do.
Sanilac, Township of, Sanilac County	260791	January 20, 1987, Emerg; September 18, 1987, Reg; January 6, 2012, Susp.	do	Do.
Worth, Township of, Sanilac County	260296	June 7, 1974, Emerg; June 1, 1987, Reg; January 6, 2012, Susp.	do	Do.
Ohio:				

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Bremen, Village of, Fairfield County	390160	July 22, 1975, Emerg; September 2, 1982, Reg; January 6, 2012, Susp.	.....do	Do.
Buckeye Lake, Village of, Fairfield County.	390882	April 26, 1983, Emerg; August 15, 1984, Reg; January 6, 2012, Susp.	.....do	Do.
Lancaster, City of, Fairfield County	390161	July 28, 1975, Emerg; May 1, 1980, Reg; January 6, 2012, Susp.	.....do	Do.
Millersport, Village of, Fairfield County	390689	May 8, 1990, Emerg; February 1, 1991, Reg; January 6, 2012, Susp.	.....do	Do.
Pickerington, City of, Fairfield County	390162	June 11, 1976, Emerg; August 5, 1991, Reg; January 6, 2012, Susp.	.....do	Do.
Sugar Grove, Village of, Fairfield County.	390163	June 25, 1975, Emerg; September 2, 1982, Reg; January 6, 2012, Susp.	.....do	Do.
Thurston, Village of, Fairfield County	390690	October 1, 1976, Emerg; November 23, 1984, Reg; January 6, 2012, Susp.	.....do	Do.
Wisconsin:				
Bangor, Village of, La Crosse County	550218	January 20, 1975, Emerg; January 2, 1981, Reg; January 6, 2012, Susp.	.....do	Do.
Holmen, Village of, La Crosse County	550219	June 27, 1975, Emerg; April 20, 1979, Reg; January 6, 2012, Susp.	.....do	Do.
La Crosse, City of, La Crosse County	555562	December 4, 1970, Emerg; January 15, 1971, Reg; January 6, 2012, Susp.	.....do	Do.
La Crosse County, Unincorporated Areas.	550217	March 26, 1971, Emerg; March 15, 1984, Reg; January 6, 2012, Susp.	.....do	Do.
Onalaska, City of, La Crosse County	550221	July 3, 1975, Emerg; September 16, 1981, Reg; January 6, 2012, Susp.	.....do	Do.
Rockland, Village of, La Crosse County	550222	N/A, Emerg; March 9, 2010, Reg; January 6, 2012, Susp.	.....do	Do.
West Salem, Village of, La Crosse County.	550560	April 17, 1986, Emerg; April 17, 1986, Reg; January 6, 2012, Susp.	.....do	Do.
Region VI				
Texas:				
Caddo Mills, City of, Hunt County	480364	N/A, Emerg; March 6, 2008, Reg; January 6, 2012, Susp.	.....do	Do.
Celeste, City of, Hunt County	480365	February 11, 1985, Emerg; September 1, 1987, Reg; January 6, 2012, Susp.	.....do	Do.
Commerce, City of, Hunt County	480366	April 10, 1975, Emerg; March 2, 1981, Reg; January 6, 2012, Susp.	.....do	Do.
Greenville, City of, Hunt County	485473	December 31, 1970, Emerg; August 13, 1971, Reg; January 6, 2012, Susp.	.....do	Do.
Josephine, City of, Hunt County	480756	N/A, Emerg; December 15, 1995, Reg; January 6, 2012, Susp.	.....do	Do.
Royse City, City of, Hunt County	480548	July 3, 1975, Emerg; July 16, 1980, Reg; January 6, 2012, Susp.	.....do	Do.
Tuscola, Town of, Taylor County	481017	October 30, 1979, Emerg; November 1, 1989, Reg; January 6, 2012, Susp.	.....do	Do.
Union Valley, City of, Hunt County	480246	N/A, Emerg; April 1, 2010, Reg; January 6, 2012, Susp.	.....do	Do.
Region VII				
Nebraska:				
Arlington, Village of, Washington County.	310227	June 11, 1975, Emerg; January 16, 1981, Reg; January 6, 2012, Susp.	.....do	Do.
Blair, City of, Washington County	310228	September 17, 1974, Emerg; July 16, 1981, Reg; January 6, 2012, Susp.	.....do	Do.
Dakota City, City of, Dakota County	310053	December 17, 1974, Emerg; September 16, 1981, Reg; January 6, 2012, Susp.	.....do	Do.
Dakota County, Unincorporated Areas	310429	August 18, 1975, Emerg; April 15, 1982, Reg; January 6, 2012, Susp.	.....do	Do.
Fort Calhoun, City of, Washington County.	310368	September 10, 1976, Emerg; December 1, 1983, Reg; January 6, 2012, Susp.	.....do	Do.
Herman, Village of, Washington County	310229	January 10, 1975, Emerg; March 18, 1985, Reg; January 6, 2012, Susp.	.....do	Do.
Homer, Village of, Dakota County	310241	March 26, 1975, Emerg; April 3, 1984, Reg; January 6, 2012, Susp.	.....do	Do.
Jackson, Village of, Dakota County	310292	May 6, 1977, Emerg; September 4, 1987, Reg; January 6, 2012, Susp.	.....do	Do.
Kennard, Village of, Washington County	310230	March 26, 1975, Emerg; September 18, 1985, Reg; January 6, 2012, Susp.	.....do	Do.
Washington, Village of, Washington County.	315496	April 4, 1986, Emerg; September 14, 1990, Reg; January 6, 2012, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Washington County, Unincorporated Areas.	310483	September 4, 1975, Emerg; February 4, 1981, Reg; January 6, 2012, Susp.	.....do	Do.
Region VIII				
Colorado:				
Canon City, City of, Fremont County	080068	May 28, 1974, Emerg; November 3, 1982, Reg; January 6, 2012, Susp.	.....do	Do.
Coal Creek, Town of, Fremont County	080210	N/A, Emerg; February 4, 2011, Reg; January 6, 2012, Susp.	.....do	Do.
Florence, City of, Fremont County	080070	June 25, 1975, Emerg; December 4, 1984, Reg; January 6, 2012, Susp.	.....do	Do.
Fremont County, Unincorporated Areas	080067	June 25, 1975, Emerg; September 29, 1989, Reg; January 6, 2012, Susp.	.....do	Do.
Montrose, City of, Montrose County	080125	January 31, 1975, Emerg; March 1, 1984, Reg; January 6, 2012, Susp.	.....do	Do.
Montrose County, Unincorporated Areas.	080124	May 23, 1975, Emerg; February 15, 1984, Reg; January 6, 2012, Susp.	.....do	Do.
Naturita, Town of, Montrose County	080126	June 18, 1975, Emerg; January 6, 1982, Reg; January 6, 2012, Susp.	.....do	Do.
Olathe, Town of, Montrose County	080128	June 5, 1975, Emerg; September 16, 1982, Reg; January 6, 2012, Susp.	.....do	Do.
Rockvale, Town of, Fremont County	080221	September 21, 1979, Emerg; October 15, 1985, Reg; January 6, 2012, Susp.	.....do	Do.
Montana:				
Butte-Silver Bow County, All Jurisdictions.	300077	September 17, 1974, Emerg; September 28, 1979, Reg; January 6, 2012, Susp.	.....do	Do.
South Dakota:				
Belle Fourche, City of, Butte County	460012	May 3, 1973, Emerg; June 1, 1977, Reg; January 6, 2012, Susp.	.....do	Do.
Butte County, Unincorporated Areas	460236	November 24, 1998, Emerg; N/A, Reg; January 6, 2012, Susp.	.....do	Do.
Custer, City of, Custer County	460019	April 11, 1973, Emerg; January 2, 1981, Reg; January 6, 2012, Susp.	.....do	Do.
Custer County, Unincorporated Areas ..	460018	October 28, 1977, Emerg; September 29, 1986, Reg; January 6, 2012, Susp.	.....do	Do.
Hermosa, Town of, Custer County	460230	July 24, 2003, Emerg; August 1, 2006, Reg; January 6, 2012, Susp.	.....do	Do.
Woonsocket, City of, Sanborn County ..	460075	May 28, 1975, Emerg; November 15, 1985, Reg; January 6, 2012, Susp.	.....do	Do.

*do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp—Suspension.

Dated: December 9, 2011.

David L. Miller,

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

[FR Doc. 2012–900 Filed 1–18–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212 and 252

RIN 0750–AH27

Defense Federal Acquisition Regulation Supplement; Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items (DFARS Case 2011–D034)

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

ACTION: Final rule.

SUMMARY: DoD is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement establishing a pilot program to assess the feasibility and advisability of acquiring military-purpose nondevelopmental items in accordance with streamlined procedures.

DATES: *Effective date:* January 19, 2012.

FOR FURTHER INFORMATION CONTACT: Manuel Quinones, telephone (703) 602–8383.

SUPPLEMENTARY INFORMATION:

I. Background

To implement section 866 of the National Defense Authorization Act for Fiscal Year 2011, DoD published an interim rule in the **Federal Register** at 76 FR 38048 on June 29, 2011, establishing a pilot program to assess the feasibility and advisability of acquiring military-purpose nondevelopmental items in accordance with streamlined procedures. The authority for this pilot program expires on January 6, 2016. Under this pilot program, DoD may enter into contracts

with nontraditional defense contractors for the purpose of—

—Enabling DoD to acquire items that otherwise might not have been available to DoD;

—Assisting DoD in the rapid acquisition and fielding of capabilities needed to meet urgent operational needs; and

—Protecting the interests of the United States in paying fair and reasonable prices for the item or items acquired.

This pilot program is designed to test whether the streamlined procedures, similar to those available for commercial items, can serve as an effective incentive for nontraditional defense contractors to (1) channel investment and innovation into areas that are useful to DoD and (2) provide items developed exclusively at private expense to meet validated military requirements.

II. Discussion and Analysis of the Public Comments

DoD reviewed the public comments received from three respondents in the development of the final rule. Two of the three respondents are supportive of both the congressional intent and the interim rule. The respondents submitted comments covering the following three categories: (A) Definition of nontraditional defense contractor; (B) definition of military-purpose nondevelopmental item; and (C) flow down of provision to subcontractors. A discussion of the comments and responses are provided as follows.

A. Definition of Nontraditional Defense Contractor

Two of the three respondents recommended revisions to the definition of nontraditional defense contractor.

Comment: One respondent suggested expanding the definition of a nontraditional defense contractor to mean an entity to include a business unit, segment or wholly-owned subsidiary of an entity. The respondent asserted that such clarifying language would permit a commercial company that occasionally accepts a contract with certified cost or pricing data requirements to participate in the pilot program without being burdened by what are recognized to be onerous contractual requirements.

Response: With regard to expanding the meaning of an entity to include ''a business unit, segment or wholly-owned subsidiary of an entity,'' the entity referred to in the interim rule is, in essence, the legal entity that signs the contract with the Government. This entity must meet all of the statutory requirements included in the definition for a nontraditional defense contractor contained in the contract clause, and changing the definition as requested would not be consistent with that definition. Therefore, no changes have been made to the final rule as a result of the comment.

Comment: Another respondent stated that the definitions are not clear as to whether Congress intended to allow subcontractors of prime contractors to be considered nontraditional defense contractors for purposes of the rule. The respondent asked, in situations where the prime contractor does not meet the definition of a nontraditional defense contractor, whether each of the subcontractors to the prime contractor will fail to meet the definition as well due to the definition of nontraditional defense contractor applying to contracts or subcontracts.

Response: The statutory definition of a nontraditional defense contractor (10 U.S.C. 2302) outlines the criteria that must be met by a prospective contractor to be eligible for the pilot program, which only covers award to prime contractors. One criterion states the entity may not be currently performing or has not performed ''any contract or subcontracts'' for DoD that is subject to full coverage under cost accounting standards. Entities that have performed as subcontractors to traditional defense contractors are not necessarily excluded from participating as a prime contractor under this pilot so long as the subcontract requirements did not entail the disqualifying criteria (i.e., full CAS coverage and certified cost and pricing data) and the entity otherwise meets the criteria. No changes have been made to the final rule as a result of this comment.

B. Definition of Military-Purpose Nondevelopmental Item

Comment: A respondent recommended amending the definition of the term ''military-purpose nondevelopmental item'' by revising the definitional criteria for determining whether an item meets the definition, including the extent to which independent research and development (IR&D) costs, and bid and proposal (B&P) costs, are considered in such a determination. The respondent cited section 824(b)(2) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011, Pub. L. 111–383, as the basis for the recommended change.

Response: The interim rule uses the statutory definition of the term ''military purpose nondevelopmental item'' required by section 866 of the NDAA for FY 2011 and used only for purposes of this pilot program. The substantive revisions to the definition as proposed by the respondent would result in the Defense Federal Acquisition Regulation Supplement (DFARS) definition being noncompliant with the statutory definition and the criteria for applying the specialized procedures authorized for this pilot program. It is also important to note that the requirements for treatment of IR&D and B&P costs that are established by section 824 of the NDAA for FY2011 are being addressed through DFARS Case 2011–D022. No changes have been made to the final rule as a result of this comment.

C. Flow Down of Provision to Subcontractors

Comment: A respondent stated that the interim rule (published as DFARS subpart 212.71) fails to clearly address the common situation in which a nontraditional defense contractor may simultaneously be a subcontractor or supplier to a traditional defense contractor. The respondent recommended the new DFARS rule make clear that it may and should flow down through any prime contract, to the suppliers/subcontractors.

Response: Unlike certain clauses, provisions are not flowed down to subcontractors. Solicitation provisions are to be completed and submitted by the prospective prime contractor with its offer. Furthermore, it is irrelevant to the program if a nontraditional defense contractor is simultaneously a subcontractor or supplier to a traditional defense contractor. As previously stated, section 866 only covers award to a prime contractor. No changes have been made to the final rule as a result of this comment.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 604, and is summarized as follows:

This rule implements a statutory requirement under section 866 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011. Section 866 authorized the Secretary of Defense to establish a pilot program to assess the feasibility and advisability of acquiring military-purpose nondevelopmental items.

The objective of this new DoD program is to permit DoD to enter into contracts with nontraditional defense contractors for the purpose of (1) Enabling DoD to acquire items that otherwise might not have been available to DoD; (2) assisting DoD in the rapid acquisition and fielding of capabilities needed to meet urgent operational needs; and (3) protecting the interests of the United States in paying fair and reasonable prices for the item or items acquired.

No public comments were received in response to the initial regulatory flexibility analysis. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to this rule.

DoD is unable to estimate at this time the number of small entities impacted by the rule, since this is a new pilot program and its purpose is to identify and attract nontraditional defense contractors as defined within the rule and section 866 of the National Defense Authorization Act for Fiscal Year 2011.

There are no reporting, recordkeeping, or other compliance requirements to small entities associated with this rule. Additionally, there were no significant alternatives considered that met the stated objectives of the applicable statute.

V. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 212 and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 212 and 252, which was published at 76 FR 38048 on June 29, 2011, is adopted as a final rule without change.

[FR Doc. 2012–970 Filed 1–18–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100804324–1265–02]

RIN 0648–XA927

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Pacific Whiting and Non-Whiting Allocations; Pacific Whiting Seasons

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

ACTION: Reapportionment of non-whiting catch allocations from mothership sector to catcher/processor sector; request for comments.

SUMMARY: This notification announces the reapportionment of 4.3 metric tons (mt) of Darkblotched rockfish, 6.5 mt of Pacific Ocean Perch, 3.3 mt of Canary rockfish, and 48.3 mt of Widow rockfish from the mothership sector to the catcher/processor sector.

DATES: The reapportionment of non-whiting is effective from 1600 local time, December 14, 2011, until December 31, 2011, unless modified, superseded or rescinded. Comments will be accepted through February 3, 2012.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2010–0194 by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal, at *http://www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter (NOAA–NMFS–2010–0194) in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Fax:* (206) 526–6736, Attn: Kevin C. Duffy.
- *Email comments directly to NMFS, Northwest Region at: Whitingreapportionment@noaa.gov.*
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Kevin C. Duffy.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (if submitting comments via the Federal Rulemaking portal, enter ''N/A'' in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kevin C. Duffy (Northwest Region, NMFS), phone: (206) 526–4743, fax: (206) 526–6736 and email: *kevin.duffy@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This notice is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpo.gov/fdsys/search/home.action.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Background

This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California.

Regulations at 50 CFR 660.150(c)(4)(ii) provide for the Regional Administrator to make available for harvest to the catcher/processor sector of the Pacific whiting fishery, the mothership sector's nonwhiting catch allocation remaining when the Pacific whiting allocation is reached or when participants in the mothership sector do not intend to harvest the remaining allocation. Consistent with these provisions, the Whiting Mothership Cooperative Manager notified NMFS in writing on December 13, 2011 that the Whiting Mothership Cooperative had concluded their harvest of mothership sector whiting for 2011.

The best available information on December 14, 2011 indicated that approximately 4.3 metric tons mt of

Darkblotched rockfish, 6.5 mt of Pacific Ocean Perch, 3.3 mt of Canary rockfish, and 48.3 mt of Widow rockfish allocated to the mothership sector for the Pacific whiting fishery in 2011, would not be used by December 31, 2011.

This notice announces the reapportionment of 4.3 mt of Darkblotched rockfish, 6.5 mt of Pacific Ocean Perch, 3.3 mt of Canary rockfish, and 48.3 mt of Widow rockfish from the mothership sector to the catcher/processor sector. The revised nonwhiting catch allocations between the catcher/processor and mothership sectors for these species are: Darkblotched rockfish, 12.8 mt, catcher/processor sector, 1.7 mt, mothership sector; Pacific Ocean Perch, 16.7 mt, catcher/processor sector, 0.66 mt, mothership sector; Canary rockfish, 8.1 mt, catcher/processor sector, 0.08 mt, mothership sector; and Widow rockfish, 135 mt, catcher/processor sector, 12.86 mt, mothership sector.

Emails sent directly to fishing businesses and postings on the Northwest Region's Internet site were used to provide actual notice to the affected fishers.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment pursuant to 5 U.S.C. 553(b)(B) because such notification would be impracticable and contrary to the public interest. As previously noted, actual notice of the reapportionment was provided to fishers. Prior notice and opportunity for public comment was impracticable because NMFS had insufficient time to provide prior notice and the opportunity for public comment between the time NMFS was notified that the mothership sector had concluded its harvest and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information. Reapportioning as quickly as possible was necessary to allow fishers access to the available fish. For the same reasons, the AA also finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3).

These actions are authorized by 50 CFR 660.150(c)(4) and 660.150(c)(5) and are exempt from review under Executive Order 12866.

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

Dated: January 13, 2012.

Steven Thur,

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

[FR Doc. 2012–1007 Filed 1–18–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA940

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

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

ACTION: Temporary rule.

SUMMARY: NMFS is reallocating the projected unused amounts of the Aleut Corporation's pollock directed fishing allowance and the Community Development Quota from the Aleutian Islands subarea to the Bering Sea subarea directed fisheries. These actions are necessary to provide opportunity for harvest of the 2012 total allowable catch of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 19, 2012, until the effective date of the final 2012 and 2013 harvest specifications for Bering Sea and Aleutian Islands (BSAI) groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, (907) 586–7228.

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

In the Aleutian Islands subarea, the portion of the 2012 pollock total allowable catch (TAC) allocated to the Aleut Corporation's directed fishing allowance (DFA) is 15,500 metric tons (mt) and the Community Development Quota (CDQ) is 1,900 mt as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011), as adjusted by two inseason adjustments (76 FR 12607, March 8, 2011 and 76 FR 81876, December 29, 2011).

As of January 20, 2012, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that 10,500 mt of Aleut Corporation's DFA and 1,900 mt of pollock CDQ in the Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS reallocates 10,500 mt of Aleut Corporation's DFA and 1,900 mt of pollock CDQ from the Aleutian Islands subarea to the 2012 Bering Sea subarea allocations. The 1,900 mt of pollock CDQ is added to the 2012 Bering Sea CDQ DFA. The remaining 10,500 mt of pollock is apportioned to the AFA Inshore sector (50 percent), AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). The 2012 pollock incidental catch allowance remains at 32,400 mt. As a result, the harvest specifications for pollock in the Aleutian Islands subarea included in the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011) are revised as follows: 5,000 mt to Aleut Corporation's DFA and 0 mt to CDQ pollock. Furthermore, pursuant to § 679.20(a)(5), Table 3 of the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011), as adjusted by two inseason adjustments (76 FR 12607, March 8, 2011 and 76 FR 81873, December 29, 2011), is revised to make 2012 pollock allocations consistent with this reallocation. This reallocation results in adjustments to the 2012 Aleut Corporation and CDQ pollock allocations established at § 679.20(a)(5).

TABLE 3—FINAL 2011 AND 2012 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[All amounts in metric tons]

Area and sector	2011 Allocations	2011 A season [1]		2011 B season [1]	2012 Allocations	2012 A season [1]		2012 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea	1,266,400	n/a	n/a	n/a	1,212,400	n/a	n/a	n/a
CDQ DFA	127,290	50,916	35,641	76,374	121,900	48,760	34,132	73,140
ICA [1]	33,804	n/a	n/a	n/a	32,400	n/a	n/a	n/a
AFA Inshore	552,653	221,061	154,743	331,592	529,050	211,620	148,134	317,430
AFA Catcher/Processors [3]	442,122	176,849	123,794	265,273	423,240	169,296	118,507	253,944
Catch by C/Ps	404,542	161,817	n/a	242,725	387,265	154,906	n/a	232,359
Catch by CVs [3]	37,580	15,032	n/a	22,548	35,975	14,390	n/a	21,585
Unlisted C/P Limit [4]	2,211	884	n/a	1,326	2,116	846	n/a	1,270
AFA Motherships	110,531	44,212	30,949	66,318	105,810	42,324	29,627	63,486
Excessive Harvesting Limit [5]	193,429	n/a	n/a	n/a	185,168	n/a	n/a	n/a
Excessive Processing Limit [6]	331,592	n/a	n/a	n/a	317,430	n/a	n/a	n/a
Total Bering Sea DFA	1,105,306	442,122	309,486	663,184	1,058,100	423,240	296,268	634,860
Aleutian Islands subarea [1]	4,600	n/a	n/a	n/a	6,600	n/a	n/a	n/a
CDQ DFA	0	0	n/a	0	.....	0	n/a	0
ICA	1,600	800	n/a	800	1,600	800	n/a	800
Aleut Corporation	3,000	3,000	n/a	0	5,000	5,000	n/a	0
Bogoslof District ICA [7]	150	n/a	n/a	n/a	150	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock, after subtraction for the CDQ DFA (10 percent) and the ICA (3 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of AI pollock. Since the pollock fishery is currently open, it is important to immediately inform the industry as to the final Bering Sea subarea pollock allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors; and provide opportunity to harvest increased seasonal pollock allocations while value is optimum. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 6, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 13, 2012.

Steven Thur,

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

[FR Doc. 2012–993 Filed 1–18–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 77, No. 12

Thursday, January 19, 2012

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 39

[Docket No. FAA–2011–1418; Directorate Identifier 2011–NM–187–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This proposed AD was prompted by chafing on high pressure fuel lines due to improper installation of an expandable pin on the lower cowl assembly. This proposed AD would require installing spring clips and repositioning the lanyard attachment points at the forward end and the forward firefloor of the lower cowl. We are proposing this AD to prevent chafing of the high pressure fuel lines, which if not corrected, could cause fuel leakage in a fire zone.

DATES: We must receive comments on this proposed AD by March 5, 2012.

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.

For service information identified in this proposed AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone (416) 375–4000; fax (416) 375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket 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: Mazdak Hobbi, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7330; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1418; Directorate Identifier 2011–NM–187–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–21, dated July 12, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During routine maintenance, an operator discovered evidence of chafing on a high pressure (HP) fuel line. The source of chafing was related to the improper installation of an expandable pin on the lower cowl assembly, which caused the lanyard to foul against the HP fuel line. This condition, if not corrected, may cause fuel leakage in a fire zone.
>
> Bombardier has issued Service Bulletin (SB) 84–71–13 to introduce spring clips to positively retain and control the lanyards, regardless of the installation orientation of the expandable pin to rectify this problem.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 84–71–13, dated May 19, 2011. 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 Proposed 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 proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 83 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required

parts would cost about $19 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 the proposed AD on U.S. operators to be $22,742, or $274 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

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2011–1418; Directorate Identifier 2011–NM–187–AD.

(a) Comments Due Date

We must receive comments by March 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4001, 4003 through 4354 inclusive; and 4356 through 4363 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 71: Power Plant.

(e) Reason

This AD was prompted by chafing on high pressure fuel lines due to improper installation of an expandable pin on the lower cowl assembly. We are issuing this AD to prevent chafing of the high pressure fuel lines, which if not corrected, could cause fuel leakage in a fire zone.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Actions

Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, install new or serviceable spring clips and re-position the lanyard attachment points, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–71–13, dated May 19, 2011.

(h) Other FAA AD Provisions

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.

(i) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–21, dated July 12, 2011; and Bombardier Service Bulletin 84–71–13, dated May 19, 2011; for related information.

Issued in Renton, Washington, on January 6, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–854 Filed 1–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1413; Directorate Identifier 2011–NM–062–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Cessna Aircraft Company Model 560XL airplanes. This proposed AD was prompted by reports of wheel inserts becoming loose and damaging brake assemblies on Model 560XL airplanes. This proposed AD would require an inspection of the torque lug and surrounding components (wheel base, side rim, lock ring) for damage (such as corrosion, cracks, dents, bent areas, damaged or missing paint or primer, or

wear on the metal), and of the bearing cup for corrosion, turned cup, or clearance that exceeds limits, and repair as applicable; measuring the torque lugs for width and replacing screws and inserts with new, improved screws and inserts; and re-identifying the wheel assemblies. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by March 5, 2012.

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

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

For Cessna service information identified in this proposed AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277–7706; telephone (316) 517–6215; fax (316) 517–5802; email *citationpubs@cessna.textron.com;* Internet *https://www.cessnasupport.com/newlogin.html.* For Goodrich service information identified in this proposed AD, contact Goodrich Corporation, Aircraft Wheels & Brakes, P.O. Box 340, Troy, Ohio 45373–3872; telephone (937) 440–2130; fax (937) 440–2055; email *WBPubs-Admin@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.* 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: David Fairback, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, KS 67209; phone: (316) 946–4154; fax: (316) 946–4107; email: *david.fairback@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1413; Directorate Identifier 2011–NM–062–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of wheel inserts becoming loose and damaging brake assemblies on Model 560XL airplanes. In two cases, a loose wheel insert damaged the brake housing at a location that affects both the antiskid brake hydraulic system and the emergency brake system. In those two cases, both systems failed to stop the airplane on the runway. This condition, if not corrected, could result in brake failure, and consequently an airplane not being able to stop on the runway.

Relevant Service Information

We reviewed Cessna Service Bulletin SB560XL–32–41, Revision 1, dated May 5, 2011, including Service Bulletin Supplemental Data SB560XL–32–41, dated February 25, 2011. That service bulletin describes procedures for doing a general visual inspection of the torque lug and surrounding components (wheel base, side rim, lock ring) for damage (such as corrosion, cracks, dents, bent areas, damaged or missing paint or primer, or wear on the metal), and of the bearing cup for corrosion, turned cup, or clearance that exceeds limits, and repair if necessary; measuring the torque lugs for width and replacing screws and inserts with new, improved screws and inserts; and re-identifying the wheel assemblies.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and the Service Information.''

Difference Between the Proposed AD and the Service Information

Operators should note that, although the Accomplishment Instructions of Cessna Service Bulletin SB560XL–32–41, Revision 1, dated May 5, 2011, describe procedures for submitting a comment sheet related to service bulletin quality and a sheet recording compliance with the service bulletin, this proposed AD would not require those actions.

Costs of Compliance

We estimate that this proposed AD affects 473 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
Inspection, and measurement of the torque lugs, replacement of screws and inserts, and re-marking.	Up to 11 work-hours × $85 per hour = $935.	Up to $6,462	Up to $7,397	Up to $3,498,781

We estimate the following costs to do any necessary repairs or replacements as applicable that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these repairs or replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair or replacement as applicable	Between 1 and 9 work-hour[s] × $85 per hour = Between $85 and $765 per wheel assembly.	Between $0 and $24,000 per wheel assembly.	Between $85 and $24,765 per wheel assembly

According to the manufacturer, all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Cessna Aircraft Company: Docket No. FAA–2011–1413; Directorate Identifier 2011–NM–062–AD.

(a) Comments Due Date

We must receive comments by March 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Cessna Aircraft Company Model 560XL airplanes; certificated in any category; having serial numbers 5002 through 5372 inclusive, 5501 through 5830 inclusive, 6001 through 6055 inclusive, 6057 through 6066 inclusive, 6069 through 6071 inclusive, and 6073 through 6077 inclusive.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by reports of wheel inserts becoming loose and damaging brake assemblies on Model 560XL airplanes. We are issuing this AD to prevent brake failure, which could result in an airplane not being able to stop on the runway.

(f) Compliance

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

(g) Inspection, Corrective Action, and Replacement

Within 1 year after the effective date of this AD, or during the next tire change accomplished after the effective date of this AD, whichever occurs first: Do the actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD on both main wheels, in accordance with the Accomplishment Instructions of Cessna Service Bulletin SB560XL–32–41, Revision 1, dated May 5, 2011. Do all applicable repairs and replacements before further flight.

(1) Do a general visual inspection of the torque lug and surrounding components (wheel base, side rim, lock ring) for damage (such as corrosion, cracks, dents, bent areas, damaged or missing paint or primer, or wear on the metal), and of the bearing cup for corrosion, turned cup, or clearance that exceeds limits, and all applicable repairs.

(2) Measure the torque lugs for width and replace screws and inserts with new, improved screws and inserts.

(3) Re-identify the wheel assembly.

Note 1: Cessna Service Bulletin SB560XL–32–41, Revision 1, dated May 5, 2011, refers to Goodrich Service Bulletin 3–1571–32–7, dated February 25, 2011, as an additional source of guidance on inspecting and repairing the torque lugs, surrounding components, and bearing cup, and re-identifying the wheel assemblies.

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.''

(h) Parts Installation

As of the effective date of this AD, no person may install, on any airplane, a wheel

assembly having P/N 3–1571–3 or 3–1571–4, unless it has been inspected, measured, and re-identified, in accordance with paragraph (g) of this AD, and all applicable repairs or replacements have been done.

(i) Credit for Actions Accomplished in Accordance With Previous Service Information

Actions done before the effective date of this AD in accordance with Cessna Service Bulletin SB560XL–32–41, dated February 25, 2011, are acceptable for compliance with the corresponding requirements of this AD.

(j) No Reporting Required

Although Cessna Service Bulletin SB560XL–32–41, Revision 1, dated May 5, 2011, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(k) 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.

(l) Related Information

(1) For more information about this AD, contact David Fairback, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, KS 67209; phone: (316) 946–4154; fax: (316) 946–4107; email: *david.fairback@faa.gov.*

(2) For Cessna service information identified in this AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277; telephone (316) 517–6215; fax (316) 517–5802; email *citationpubs@cessna.textron.com;* Internet *https://www.cessnasupport.com/newlogin.html.* For Goodrich service information identified in this proposed AD, contact Goodrich Corporation, Aircraft Wheels & Brakes, P.O. Box 340, Troy, Ohio 45373–3872; telephone (937) 440–2130; fax (937) 440–2055; email *WBPubs-Admin@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Ave. SW., Renton, WA. For information on the availability of this material at the FAA, call (425) 227–1221.

Issued in Renton, Washington, on January 6, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–855 Filed 1–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1416; Directorate Identifier 2011–NM–156–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702); CL–600–2D15 (Regional Jet Series 705); CL–600–2D24 (Regional Jet Series 900); and CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by reports of deformation of the pressure regulator on the oxygen cylinder, which was attributed to batches of raw material that did not meet required tensile strength. This proposed AD would require an inspection to determine if certain oxygen pressure regulators are installed, and replacement of oxygen cylinder and regulator assemblies (CRAs) containing pressure regulators that do not meet required material properties. We are proposing this AD to prevent elongation of the pressure regulator neck, which could result in rupture of the oxygen cylinder, and in the case of cabin depressurization, oxygen would not be available when required.

DATES: We must receive comments on this proposed AD by March 5, 2012.

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.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone (514) 855–5000; fax (514) 855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket 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: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1416; Directorate Identifier 2011–NM–156–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–28, dated July 28, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During a routine inspection, deformation was found at the neck of the pressure regulator body on the oxygen Cylinder and Regulator Assemblies (CRA) of a BD–700–1A11 aeroplane.

An investigation by the vendor, Avox Systems Inc., revealed that the deformation was attributed to two (2) batches of raw material that did not meet the required tensile strength. This may cause elongation of the pressure regulator neck, which could result in rupture of the oxygen cylinder, and in the case of cabin depressurization, oxygen would not be available when required.

Although there have been no reported failures to date on any CL–600–2C10, CL–600–2D15, CL–600–2D24 or CL–600–2E25 aeroplanes, similar oxygen pressure regulators, Part Number (P/N) 806370–06, could also be installed on the aeroplanes listed in the Applicability section of this [TCCA] directive.

This [TCCA] directive mandates [an inspection for certain serial numbers, and if necessary, replacement of the affected oxygen CRA in accordance with the accomplishment instructions of Bombardier Service Bulletin 670BA–35–011, dated July 5, 2011; and] the replacement of oxygen CRAs containing pressure regulators that do not meet the required material properties.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 670BA–35–011, dated July 5, 2011. 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 Proposed 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 proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 263 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. 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 the proposed AD on U.S. operators to be $44,710, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour and require parts costing $0, for a cost of $85 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2011–1416; Directorate Identifier 2011–NM–156–AD.

(a) Comments Due Date

We must receive comments by March 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10002 through 10999 inclusive.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15990 inclusive.

(3) Bombardier, Inc. Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 through 19990 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 35: Oxygen.

(e) Reason

This AD was prompted by reports of deformation of the pressure regulator on the oxygen cylinder, which was attributed to batches of raw material that did not meet required tensile strength. We are issuing this

AD to prevent elongation of the pressure regulator neck, which could result in rupture of the oxygen cylinder, and in the case of cabin depressurization, oxygen would not be available when required.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Actions

Within 1,800 flight hours or 6 months after the effective date of this AD, whichever occurs first: Inspect the serial number of each oxygen pressure regulator, part number (P/N) 806370–06, to determine if the serial number of the regulator is listed in ''Table 2, Regulators'' of paragraph 1.A.(1) of Bombardier Service Bulletin 670BA–35–011, dated July 5, 2011. If the serial number of the oxygen pressure regulator, P/N 806370–06, is listed in ''Table 2, Regulators'' of paragraph 1.A.(1) of Bombardier Service Bulletin 670BA–35–011, dated July 5, 2011, before further flight: Replace the affected oxygen cylinder and regulator assembly (CRA), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–35–011, dated July 5, 2011.

(h) Parts Installation

As of the effective date of this AD, no person may install an oxygen pressure regulator, P/N 806370–06, having a serial number listed in ''Table 2, Regulators'' of paragraph 1.A.(1) of Bombardier Service Bulletin 670BA–35–011, dated July 5, 2011, on any airplane unless the serial number of the CRA and pressure regulator have a suffix ''A'' beside the serial number.

(i) Other FAA AD Provisions

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.

(j) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–28, dated July 28, 2011; and Bombardier Service Bulletin 670BA–35–011, dated July 5, 2011; for related information.

Issued in Renton, Washington, on January 6, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–857 Filed 1–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1415; Directorate Identifier 2011–NM–145–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 717–200 airplanes. This proposed AD was prompted by reports of cracks found on the center section ribs of the horizontal stabilizers. This proposed AD would require repetitive inspections for cracking of the aft face of the left and right rib hinge bearing lugs of the center section of the horizontal stabilizer; and crack measurement, repairs, and installation of a new center section rib if necessary. We are proposing this AD to detect and correct cracks in the left and right bearing lugs of the rib hinge spreading at the same time, which could result in failure of both hinge bearing lugs. Failure of the hinge bearing lugs could result in the inability of the horizontal stabilizer to sustain flight loads and therefore reduce the controllability of the airplane.

DATES: We must receive comments on this proposed AD by March 5, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; phone: (206) 544–5000, extension 2; fax: (206) 766–5683; email: *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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: George Garrido, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5357; fax: (562) 627–5210; email: *George.Garrido@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1415; Directorate Identifier 2011–NM–145–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any

personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of cracks found on the left, right, or, in several instances, both of the center section ribs of the horizontal stabilizer on Model MD–80 and MD–90 series airplanes. Two cracks were reported on Model MD–80 series airplanes having accumulated between 23,700 and 41,963 total flight hours and between 23,300 and 35,294 total flight cycles. Nine cracks were reported on Model MD–90 series airplanes having accumulated between 9,051 and 26,053 total flight hours and between 8,939 and 25,260 total flight cycles. These cracks were found on the aft face of the hinge bearing lugs of the horizontal stabilizer. Undetected cracks in the left and right bearing lugs of the rib hinge, if not corrected, could spread at the same time, which could result in failure of both hinge bearing lugs, the inability of the horizontal stabilizer to sustain flight loads, and consequent reduced controllability of the airplane.

The design of the horizontal rib on Model 717–200 airplanes is the same rib design used on Model MD–80 and MD–90 series airplanes, and is susceptible to the same failure mode. Therefore, Model 717–200 airplanes may also be subject to the identified unsafe condition.

Related Rulemaking

We have issued similar rulemaking in AD 2011–01–11, Amendment 39–16565 (76 FR 430, January 5, 2011), for The Boeing Company Model MD–90 airplanes, that requires repetitive high frequency eddy current (HFEC) inspections for cracking on the hinge bearing lugs of the left and right sides of the center section ribs of the horizontal stabilizer, and related investigative and corrective actions if necessary.

We have also issued NPRM 2011–NM–027–AD (76 FR 53346, August 26, 2011), for 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. That NPRM proposes to require repetitive HFEC inspections for cracking of the left and right rib hinge bearing lugs of the aft face of the center section of the horizontal stabilizer; measuring crack length and blending out cracks; and replacing the horizontal stabilizer center section rib, if necessary.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 717–55A0011, dated May 17, 2011. This service information describes procedures for repetitive eddy current high frequency (ETHF) inspections for cracks on the aft face on the left and right rib hinge bearing lugs of the center section of the horizontal stabilizer; and crack measurement, repairs, post-repair repetitive inspections, and installation of a new center section rib if necessary.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

Operators should note that, although the Accomplishment Instructions of Boeing Alert Service Bulletin 717–55A0011, dated May 17, 2011, describe procedures for submitting inspection results, this proposed AD would not require those actions.

Costs of Compliance

We estimate that this proposed AD affects 129 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
ETHF Inspection	6 work-hours × $85 per hour = $510 per inspection cycle.	$0	$510 per inspection cycle	$65,790 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition labor costs specified in this proposed AD. The estimated parts cost for a replacement rib is $16,387.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2011–1415; Directorate Identifier 2011–NM–145–AD.

(a) Comments Due Date

We must receive comments by March 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 717–200 airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 5510, Horizontal Stabilizer Structure.

(e) Unsafe Condition

This AD was prompted by reports of cracks found on the center section ribs of the horizontal stabilizers. We are issuing this AD to detect and correct cracks in the left and right bearing lugs of the rib hinge spreading at the same time, which could result in failure of both hinge bearing lugs. Failure of the hinge bearing lugs could result in the inability of the horizontal stabilizer to sustain flight loads and therefore reduce the controllability of the airplane.

(f) Compliance

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

(g) Repetitive Eddy Current High Frequency (ETHF) Inspections

Before the accumulation of 35,000 total flight cycles, or within 8,275 flight cycles after the effective date of this AD, whichever occurs later: Do an ETHF inspection for cracks of the aft face on the left and right rib hinge bearing lugs of the center section of the horizontal stabilizer, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 717–55A0011, dated May 17, 2011. If no crack is found, repeat the inspection thereafter at intervals not to exceed 10,500 flight cycles.

(h) Crack Measurement

If any crack is found during any inspection required by paragraph (g) of this AD: Before further flight, measure the length of the crack, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 717–55A0011, dated May 17, 2011.

(i) Blend Out Repair, ETHF Inspections, and Corrective Action for Certain Crack Lengths

For any crack that meets ''Condition 2A'' of Table 1 of 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 717–55A0011, dated May 17, 2011: Do the actions in paragraphs (i)(1) and (i)(2) of this AD.

(1) Before further flight, do a blend out repair, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 717–55A0011, dated May 17, 2011.

(2) Within 14,200 flight cycles after accomplishing the blend out repair required by paragraph (i)(1) of this AD: Do an ETHF inspection of the blend out repair area for cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 717–55A0011, dated May 17, 2011. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 5,400 flight cycles.

(i) If any crack is found during the ETHF inspection required by paragraph (i)(2) of this AD: Before further flight, remove the cracked center section rib of the horizontal stabilizer and install a new center section rib, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 717–55A0011, dated May 17, 2011.

(ii) Within 35,000 flight cycles after the installation of the new center section rib, do the actions in paragraph (g) of this AD.

(j) Corrective Action for Certain Crack Lengths

For any crack that meets ''Condition 2D'' of Table 1 of 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 717–55A0011, dated May 17, 2011: Before further flight, remove the cracked center section rib of the horizontal stabilizer and install a new center section rib, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 717–55A0011, dated May 17, 2011. Within 35,000 flight cycles after the installation of the new rib, do the actions in paragraph (g) of this AD.

(k) No Reporting Requirement

Although Boeing Alert Service Bulletin 717–55A0011, dated May 17, 2011, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(l) Alternative Methods of Compliance (AMOCs)

(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 the approval must specifically refer to this AD.

(m) Related Information

(1) For more information about this AD, contact George Garrido, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5357; fax: (562) 627–5210; email: *George.Garrido@faa.gov.*

(2) For service information identified in this AD, Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; phone: (206) 544–5000, extension 2; fax: (206) 766–5683; email: *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.

Issued in Renton, Washington, on January 6, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–858 Filed 1–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1417; Directorate Identifier 2011–NM–159–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This proposed AD was prompted by reports that escape slides/rafts did not deploy due to galvanic corrosion of the door-mounted slide/raft packboard release mechanisms. This proposed AD would require doing a general visual inspection of the housing

assembly of the packboard release mechanism to determine if its surface treatment has been sealed, and if unsealed, replacing the housing assembly with a new or serviceable housing assembly. We are proposing this AD to detect and correct corrosion of the packboard release mechanisms, which could interfere with escape slide/raft deployment, prohibit doors from opening in the armed mode, and cause consequent delay and injury during evacuation of passengers and crew from the cabin in the event of an emergency.

DATES: We must receive comments on this proposed AD by March 5, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For Boeing service information identified in this proposed 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; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* For Air Cruisers service information identified in this AD, contact Air Cruisers Company, 1747 State Route 34, Wall, New Jersey 07727–3935; telephone: (732) 681–3527; fax: (732) 681–9163; email: *Aircruisers@zodiacaerospace.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 proposed AD, the regulatory evaluation, any comments received and other information. The street address for the Docket Office (phone: (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Ana Martinez Hueto, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6592; fax: (425) 917–6591; email: *ana.m.hueto@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1417; Directorate Identifier 2011–NM–159–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received reports that escape slides/rafts did not deploy due to galvanic corrosion of door-mounted slide/raft packboard release mechanisms. Such corrosion, if not detected and corrected, could interfere with escape slide/raft deployment, prohibit doors from opening in the armed mode, and cause consequent delay and injury during evacuation of passengers and crew from the cabin in the event of an emergency.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 777–25–0507, dated June 30, 2011. The service information describes procedures for doing a general visual inspection of the housing assembly of the door-mounted slide/raft packboard release mechanism to determine if its surface treatment has been sealed, and if unsealed, replacing the housing assembly with a new or serviceable housing assembly.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 161 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
Inspection	Between 4 and 16 work-hours × $85 per hour = Between $340 and $1,360.	$0	Between $340 and $1,360.	Between $54,740 and $218,960.

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	1 work-hour × $85 per hour = $85	$137	$222

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2011–1417; Directorate Identifier 2011–NM–159–AD.

(a) Comments Due Date

We must receive comments by March 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 777–25–0507, dated June 30, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by reports that escape slides/rafts did not deploy due to galvanic corrosion of the door-mounted slide/raft packboard release mechanisms. We are issuing this AD to detect and correct corrosion in the packboard release mechanisms, which could interfere with escape slide/raft deployment, prohibit doors from opening in the armed mode, and cause consequent delay and injury during evacuation of passengers and crew from the cabin in the event of an emergency.

(f) Compliance

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

(g) Inspection and Replacement

Within 42 months after the effective date of this AD, at the applicable passenger/crew entry doors identified in Boeing Special Attention Service Bulletin 777–25–0507, dated June 30, 2011: Do a general visual inspection of the housing assembly of the packboard release mechanism to determine if its surface treatment has been sealed; and if unsealed, before further flight, replace the housing assembly with a new or serviceable housing assembly, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0507, dated June 30, 2011.

Note 1: 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.''

Note 2: Boeing Special Attention Service Bulletin 777–25–0507, dated June 30, 2011, refers to Air Cruisers Service Bulletin 777 107–25–30, dated September 30, 2010, as an additional source of guidance for inspecting and installing new housing assembly of the door-mounted slide/raft packboard release mechanism.

(h) Alternative Methods of Compliance (AMOCs)

(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 manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(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

(1) For more information about this AD, contact Ana Martinez Hueto, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6592; fax: (425) 917–6591; email: *ana.m.hueto@faa.gov.*

(2) For Boeing 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; email

me.boecom@boeing.com; Internet *https://www.myboeingfleet.com.* For Air Cruisers service information identified in this AD, contact Air Cruisers Company, 1747 State Route 34, Wall, New Jersey 07727–3935; telephone: (732) 681–3527; fax: (732) 681–9163; email: *Aircruisers@zodiacaerospace.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.

Issued in Renton, Washington, on January 6, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–856 Filed 1–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1419; Directorate Identifier 2010–NM–281–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain The Boeing Company Model 737–300, –400, and –500 series airplanes. The existing AD currently requires repetitive inspections for cracking of the crown area of the fuselage skin, and corrective actions if necessary. Since we issued that AD, we received additional reports of cracking at the horizontal chem-mill steps away from the lap joints over the entire crown area, and vertical chem-mill cracks adjacent to the butt joints. This proposed AD would add repetitive inspections for cracking using different inspection methods and would inspect additional areas, and corrective actions if necessary. This proposed AD would also require additional repairs to previously repaired areas and repetitive inspections for loose fasteners and replacement if necessary in certain previously repaired areas. This proposed AD would also reduce certain compliance times and extend certain other compliance times. We are proposing this AD to detect and correct fatigue cracking of the fuselage skin, which could cause the fuselage skin to fracture and fail, and result in rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by March 5, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this 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; email *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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6447; fax: (425) 917–6590; email: *wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1419; Directorate Identifier 2010–NM–281–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On June 15, 2005, we issued AD 2005–13–27, amendment 39–14164 (70 FR 36821, June 27, 2005), for certain Boeing Model 737–300, –400, and –500 series airplanes. That AD requires repetitive inspections for cracking of the crown area of the fuselage skin, and corrective actions if necessary. That AD resulted from a Model 737 fuselage structure test and fatigue analysis that indicate fuselage skin cracking could occur between 21,000 and 42,000 total flight cycles. We issued that AD to detect and correct fatigue cracking of the fuselage skin, which could cause the fuselage skin to fracture and fail, and result in rapid decompression of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2005–13–27, amendment 39–14164 (70 FR 36821, June 27, 2005), additional reports of cracking at the horizontal chem-mill steps away from the lap joints over the entire crown area, and vertical chem-mill cracks adjacent to the butt joints, have been received. Although there were no changes to the applicability in AD 2005–13–17, we have changed paragraph (c) of the proposed AD to refer to Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010. Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005, was referred to for accomplishing the actions in AD 2005–13–27, amendment 39–14164 (70 FR 36821, June 27, 2005). Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, describes procedures for repetitive non-destructive inspections (NDI) (medium

frequency eddy current, magneto optical imaging, C-scan, or ultrasonic phased array) for cracking of the fuselage skin, and corrective actions if necessary. The NDI inspections for cracking of the skin include:

- Inspecting for horizontal chem-mill cracking above the S–4 and S–10 lap joints
- Inspecting for horizontal chem-mill cracking in the shear wrinkle areas
- Inspecting for vertical chem-mill cracking at specified locations
- Inspecting for horizontal chem-mill cracking in general pocket-to-pocket areas at specified locations.

The corrective actions include installing a permanent repair (including related investigative actions and applicable corrective actions), installing a time-limited repair (including related investigative actions and applicable corrective actions), and contacting Boeing for repair instructions and doing the repair. For the temporary repair, the related investigative actions include a detailed inspection for cracks of the skin and a detailed inspection for corrosion and disbonding of the lap joint; and the corrective action is contacting Boeing for repair instructions and doing the repair. For the permanent repair, the related investigative actions include an NDI inspection for cracks of the skin and fastener holes and a detailed inspection for corrosion and disbonding of the skin; and the corrective action is contacting Boeing for repair instructions and doing the repair.

Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, also describes procedures, for airplanes on which permanent repairs have already been done, for installing internal tear strap doublers.

Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, also describes procedures, for airplanes on which time-limited repairs have already been installed, for doing repetitive detailed inspections for loose fasteners until the permanent repair is installed; and making the repair permanent (including related investigative actions and applicable corrective actions) by replacing the blind fasteners in the time-limited repair with solid rivets, and installing internal tear strap doublers. The related investigative actions include an NDI for cracks of the fastener holes and skin, a general visual inspection to determine if fasteners are installed common to the chem-milled steps, and a detailed inspection for corrosion and disbonding of the skin; and the corrective action is contacting Boeing for repair instructions and doing the repair.

The repetitive NDI inspection intervals vary depending on the configuration and the inspection option. Option 1 of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, specifies doing one of the following NDI; medium frequency eddy current inspection, magneto optical imaging inspection, or C-scan inspection). Option 2 specifies doing one NDI—an external ultrasonic phased array inspection. The repetitive interval ranges between 500 flight cycles and 2,400 flight cycles. Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, also specifies that if the inspection procedure is switched from Option 2 to Option 1, then the next Option 1 inspection must be done within the Option 2 interval; and that if the inspection procedure is switched from Option 1 to Option 2, then the next two Option 2 inspections must be done within the Option 1 interval.

The inspection thresholds range from 25,000 total flight cycles to 81,000 total flight cycles, depending on the airplane configuration and inspection location. The grace periods range from 500 to 2,400 flight cycles or 1,800 flight hours, depending on the airplane configuration and inspection location. The repetitive inspection intervals range from 500 to 2,400 flight cycles, or 1,800 to 2,400 flight hours, depending on the inspection type and airplane configuration. For airplanes on which a time-limited repair is done, the compliance time to do the permanent repair is 6,000 flight cycles after doing the time-limited repair.

Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, also includes an exception to inspecting the chem-mill steps under an existing external repair doubler, provided the conditions specified below apply:

- The repair was installed after November 24, 2010
- The repair was approved by the FAA or by a Boeing Commercial Airplanes Organization Designation Authorization (ODA) who was authorized by the FAA to make such findings
- The repair extends a minimum of three rows of fasteners on each side of the chem-mill step line in the circumferential direction, Or
- The repair was approved by the FAA or by a Boeing Commercial Airplanes Organization Designation Authorization (ODA) who was authorized by the FAA to make such findings
- The repair extends a minimum of 2 rows of 3/16 inch diameter fasteners on each side of the chem-mill step in the circumferential direction with 5–6D fastener spacing
- The repair is similar to Figure 201, Repair 31 of Figure 201 of Subject 53–00–01, ''Fuselage Skin—General,'' of the Boeing 737–300, 737–400, or 737–500 Structural Repair Manual, with regard to fastener type, size layout and pitch; repair part thickness and material; and repair installation.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain all of the requirements of AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005). This proposed AD would add repetitive inspections for cracking using different inspection methods and would inspect additional areas, and corrective actions if necessary. This proposed AD would also require, for airplanes on which the existing permanent repair was done, installing internal tear strap doublers. This proposed AD would also require, for airplanes on which the existing temporary repair was done, doing repetitive inspections for loose fasteners and replacement if necessary, and installing a permanent repair. This proposed AD would also change (reducing some and extending others) initial compliance times and repetitive intervals. This proposed AD would also require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

The Accomplishment Instructions in Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, do not provide a procedure for replacing loose fasteners; however, this proposed AD requires replacing any loose fastener with a new fastener of the same type and size as specified in Figures 6, 35 and 36, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, specifies to contact the manufacturer for instructions on how to

repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

• In accordance with a method that we approve; or

• Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 109 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Cost per product	Cost on U.S. operators
Inspection (retained actions from AD 2005–13–27, Amendment 39-14164 (70 FR 36821, June 27, 2005).	94 work-hours × $85 per hour = $7,990.	$7,990 per inspection cycle	$870,910.
New NDI Inspections (medium frequency eddy current, magneto optical imaging, C-scan, or ultrasonic phased array).	Up to 390 work-hours × $85 per hour = $33,150.	Up to $33,150 per inspection cycle	Up to $3,613,350.
Install internal tear strap doublers (for airplanes on which permanent repair was already done).	Up to 30 work-hours × $85 per hour = $2,550.	Up to $2,550	Up to $277,950.
* Inspection for loose fasteners (for airplanes on which temporary repair was already done).	1 work-hour × $85 per hour = $85	$85	$9,265.
* Install permanent repair (for airplanes on which temporary repair was already done).	Up to 48 work-hours × $85 per hour = $4,080.	Up to $4,080	Up to $444,720.
* Inspection adjacent to lap joint repair	3 work-hours × $85 per hour = $255.	$255	$27,795.

* The cost for this action is for one typical repair only.

We estimate the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair [1]	209 work-hours × $85 per hour = $17,765	None	$17,765.

[1] Repair cost estimate is for one typical repair only.

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005), and adding the following new AD:

The Boeing Company: Docket No. FAA–2011–1419; Directorate Identifier 2010–NM–281–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by March 5, 2012.

(b) Affected ADs

This AD supersedes AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005).

(c) Applicability

This AD applies to The Boeing Company Model 737–300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracking at the horizontal chem-mill steps away from the lap joints over the entire crown area, and vertical chem-mill cracks adjacent to the butt joints. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin, which could cause the fuselage skin to fracture and fail, and result in rapid decompression of the airplane.

(f) Compliance

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

(g) Restatement of Requirements of AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005): Initial Inspections per Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, Dated March 31, 2005

At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD, perform detailed and eddy current inspections for cracking of the crown area of the fuselage skin in accordance with Part 1, including the ''Note,'' of the Work Instructions of Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005, except as provided by paragraph (j) of this AD. Doing the inspections required by paragraph (m) of this AD terminates the inspections required by this paragraph for the corresponding inspection areas.

(1) Before the accumulation of the applicable total flight cycles specified in the ''Threshold'' column of Table 1 of Figure 1 of Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005.

(2) Within 4,500 flight cycles after August 1, 2005 (the effective date of AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005).

(h) Repetitive Inspections per Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, Dated March 31, 2005

Repeat either the detailed or eddy current inspections specified in paragraph (g) of this AD at the applicable intervals specified in paragraph (h)(1) or (h)(2) of this AD until paragraph (i)(1) or (i)(2) of this AD has been done, as applicable. Doing the inspection required by paragraph (m) of this AD terminates the inspections required by this paragraph for the corresponding inspection area.

(1) Repeat the detailed inspections thereafter at intervals not to exceed 1,200 flight cycles.

(2) Repeat the eddy current inspections thereafter at intervals not to exceed 3,000 flight cycles.

(i) Permanent or Time-Limited Repair for Cracking Found During Inspections in Accordance With Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, Dated March 31, 2005

If any cracking is found during any inspection required by paragraph (g) or (h) of this AD, do the actions specified in paragraph (i)(1) or (i)(2) of this AD in accordance with Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005, except as provided by paragraphs (j) and (k) of this AD.

(1) Before further flight, do a permanent repair (including related investigative actions and applicable corrective actions) in accordance with Part 2 of the Work Instructions of Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005. Doing a permanent repair ends the repetitive inspections required by paragraph (h) of this AD for the repaired area only.

(2) Do the actions specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD at the time specified in the applicable paragraph. Doing a time-limited repair ends the repetitive inspections required by paragraph (h) of this AD for the repaired area only.

(i) Before further flight, do a time-limited repair (including related investigative actions and applicable corrective actions) in accordance with Part 3 of the Work Instructions of Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005.

(ii) At the times specified in Figure 8 of Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005, do the related investigative and corrective actions in accordance with Part 3 of the Work Instructions of Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005.

(j) Contact the FAA

Where Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005, specifies to contact Boeing for appropriate action: Before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings; or using a method approved in accordance with the procedures specified in paragraph (x) of this AD. For a repair method to be approved, the approval must specifically reference this AD.

(k) No Reporting for Actions in Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, Dated March 31, 2005

Although Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005, specifies reporting certain information to Boeing, this AD does not require that action.

(l) Actions Accomplished According to Previous Issue of Service Bulletin

Actions done before August 1, 2005, in accordance with Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002, are acceptable for compliance with the corresponding actions required by paragraphs (g), (h), and (i) of this AD.

(m) New Requirements of This AD: Fuselage Skin Inspections at Chem-Mill Steps Common to Lap Joints

Except as provided by paragraph (v)(1) of this AD; at the applicable time specified in Tables 1 and 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010: Do a non-destructive inspection (NDI) (medium frequency eddy current, magneto optical imaging, C-scan, or ultrasonic phased array) for horizontal chem-mill cracking above the S–4 and S–10 lap joints, in accordance with paragraph 3.B.1.a. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, except as provided by paragraph (r) of this AD. Repeat the applicable inspections thereafter at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010. Accomplishment of the inspections required by this paragraph terminates the requirements of paragraphs (g) and (h) of this AD for the corresponding inspection areas.

Note 1: Option 1 of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, specifies doing one of the following NDI; medium frequency eddy current inspection, magneto optical imaging inspection, or C-scan inspection. Option 2 specifies doing one NDI—an external ultrasonic phased array inspection. These options have different compliance times after the initial inspection.

(n) Permanent or Time-Limited Repair for Cracking Found During Paragraph (m) Inspections

If any cracking is found during any inspection required by paragraph (m) of this AD, do the actions specified in paragraph (n)(1) or (n)(2) of this AD.

(1) Before further flight, do a permanent repair (including related investigative actions and applicable corrective actions) in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, except as provided by paragraph (v)(2) of this AD. Doing a permanent repair ends the repetitive inspections required by paragraph (m) of this AD for the repaired area only.

(2) Do the actions specified in paragraphs (n)(2)(i), (n)(2)(ii), and (n)(2)(iii) of this AD at

the time specified in the applicable paragraph. Doing a time-limited repair ends the repetitive inspections required by paragraph (m) of this AD for the repaired area only.

(i) Before further flight, do a time-limited repair (including related investigative actions and applicable corrective actions) in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, except as provided by paragraph (v)(2) of this AD.

(ii) Within 3,000 flight cycles after the time-limited repair was installed as specified in paragraph (n)(2)(i) of this AD or within 500 flight cycles after the effective date of this AD, whichever occurs later, do a detailed inspection for loose fasteners, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles until the permanent repair required by paragraph (n)(2)(iii) of this AD is done. If any loose fasteners are found, before further flight, replace the fasteners with new fasteners of the same type and size as specified in Figures 6, 35 and 36 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

(iii) Within 6,000 flight cycles after the time-limited repair was installed as specified in paragraph (n)(2)(i) of this AD, do the permanent repair specified in paragraph (n)(1) of this AD.

(o) Fuselage Skin Inspections at Chem-mill Steps Common to Shear Wrinkle Areas

Except as provided by paragraph (v)(1) of this AD; at the applicable time specified in Table 3 of paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010: Do an NDI (medium frequency eddy current, magneto optical imaging, C-scan, or ultrasonic phased array) for horizontal chem-mill cracking in the shear wrinkle areas, in accordance with paragraph 3.B.1.b of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010. Repeat the applicable inspections thereafter at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

(p) Fuselage Skin Inspections at Specified Vertical Chem-mill Step Locations

Except as provided by paragraph (v)(1) of this AD; at the applicable time specified in Table 4 of paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010: Do an NDI (medium frequency eddy current, magneto optical imaging, C-scan, or ultrasonic phased array) for vertical chem-mill cracking at locations specified in, and in accordance with paragraph 3.B.1.c. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010. Repeat the applicable inspections thereafter at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

(q) Fuselage Skin Inspections at Chem-mill Steps in General Pocket-to-Pocket Areas

Except as provided by paragraph (v)(1) of this AD; at the applicable time specified in Tables 5 and 6 of paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010: Do an NDI (medium frequency eddy current, magneto optical imaging, C-scan, or ultrasonic phased array) for horizontal chem-mill cracking in general pocket-to-pocket areas at specified locations in and in accordance with paragraph 3.B.1.d., 3.B.1.e., and 3.B.1.f., as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010. Repeat the applicable inspections thereafter at intervals not to exceed those specified in Tables 5 and 6 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

(r) Inspection Exception

For inspections required by paragraph (m) of this AD: It is not necessary to inspect the chem-mill steps under an existing repair installed using Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002; or Revision 1, dated March 31, 2005.

(s) Repair of Cracking Found During Inspections Required by Paragraphs (o) Through (q) of This AD

If any crack is found during any inspections required by paragraph (o), (p), or (q) of this AD, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (x) of this AD.

(t) Actions for Airplanes on Which Repairs Have Been Done Using Previous Service Information

(1) For airplanes on which permanent repairs have been done in accordance with Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002, or Revision 1, dated March 31, 2005; except airplanes on which internal tear strap doublers were previously installed using a repair plan approved using the procedures specified in paragraph (x) of this AD: Within 6,000 flight cycles after the effective date of this AD, install internal tear strap doublers, in accordance with paragraph 3.B.3. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, except as provided by paragraph (v)(2) of this AD. Installation of internal tear strap doublers specified in this paragraph terminates the inspections required by paragraph (m) of this AD for the repaired area only.

(2) For airplanes on which time-limited repairs have been installed in accordance with Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002, or Revision 1, dated March 31, 2005; except airplanes on which the permanent repair has been installed before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002, or Revision 1, dated March 31, 2005: Within 3,000 flight cycles after the time limited repair is installed, or within 500 flight cycles after the effective date of the AD, whichever occurs later, do a detailed inspection for loose fasteners, in accordance with paragraph 3.B.4. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles until the permanent repair is installed in accordance with paragraph (n)(1) of this AD. If any loose fasteners are found, before further flight, replace the fasteners with new fasteners of the same type and size as specified in Figures 6, 35, and 36, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010.

(3) For airplanes on which time-limited repairs have been installed in accordance with Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002, or Revision 1, dated March 31, 2005; except airplanes on which the permanent repair has been installed before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002, or Revision 1, dated March 31, 2005; before the effective date of this AD: Within 6,000 flight cycles after the time-limited repair is installed, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, make the repair permanent by replacing the blind fasteners in the time-limited repair with solid rivets, and install internal tear strap doublers, in accordance with paragraph 3.B.4. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, except as provided by paragraph (v)(2) of this AD.

(u) Action Not in Accomplishment Instructions

If any crack is found after the time-limited or permanent repair is installed, and Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (x) of this AD.

(v) Exceptions to Boeing Alert Service Bulletin 737–53A1234, Revision 2, Dated November 24, 2010

(1) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, specifies a compliance time relative to the ''release of Revision 2 of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (x) of this AD.

(3) Although Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, specifies reporting certain information to Boeing, this AD does not require that action.

(w) Post-Repair Inspections

The post-repair inspection specified in Table 7 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, is not required by this AD.

Note 2: The damage tolerance inspections specified in Table 7 of paragraph 1.E., Compliance, of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, may be used in support of compliance with section 121.1109(c)(2) or 129.109(c)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(c)(2)). The corresponding actions specified in the Accomplishment Instructions and Figures 40 and 41 of Boeing Alert Service Bulletin 737–53A1234, Revision 2, dated November 24, 2010, are not required in this AD.

(x) Alternative Methods of Compliance (AMOCs)

(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 the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(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, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2005–13–27, Amendment 39–14164 (70 FR 36821, June 27, 2005), are approved as AMOCs for the corresponding requirements in this AD.

(y) Related Information

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590; email: *wayne.lockett@faa.gov.*

(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; email *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.

Issued in Renton, Washington, on January 6, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–859 Filed 1–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0046; Directorate Identifier 2011–CE–040–AD]

RIN 2120–AA64

Airworthiness Directives; Glasflugel Gliders

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Glasflugel Models Standard Libelle-201B, Club Libelle 205, Mosquito, and Kestrel gliders. This proposed 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 corrosion damage to the elevator control rod that could lead to failure of the elevator control rod, possibly resulting in loss of control of the glider. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by March 5, 2012.

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 proposed AD, contact Glasfaser Flugzeug-Service Hansjörg Streifeneder GmbH, D–72582 Grabenstetten, Germany; phone: +49(0)73821032, fax: +49(0)73821629; email: *info@streifly.de;* Internet: *www.streifly.de/.* 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 proposed 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: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0046; Directorate Identifier 2011–CE–040–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent

for the Member States of the European Community, has issued EASA AD No.: 2011–0213R1, dated November 8, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

A broken elevator control rod in the vertical fin on a Kestrel sailplane has been reported. The technical investigation revealed that water had soaked into the elevator control rod through a control bore hole and resulted in corrosion damage. The investigation concluded as well that the corrosion cannot be detected from outside the elevator control rod.

This condition, if not detected and corrected, could lead to failure of the elevator control rod, possibly resulting in loss of control of the sailplane.

To address this unsafe condition, Glasfaser Flugzeug-Service GmbH have developed and published Technical Note (TN) TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, TN 604–11, which provides instructions for elevator control rod inspection and replacement.

For the reasons described above, EASA issued AD 2011–0213 to require a one-time inspection and replacement of the affected elevator control rod with an improved part.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Glasfaser Flugzeug-Service GmbH has issued Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011 (EASA translation approval dated September 9, 2011). The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 54 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $333 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $45,522, or $843 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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Glasflugel: Docket No. FAA–2012–0046; Directorate Identifier 2011–CE–040–AD.

(a) Comments Due Date

We must receive comments by March 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Glasflugel models and serial number (S/N) gliders, certificated in any category:

(1) Club Libelle 205, all S/Ns

(2) Kestrel, all S/Ns, except S/N 85, 110, and 125

(3) Mosquito, all S/Ns

(4) Standard Libelle-201B, S/N 169

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by 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 corrosion damage to the elevator control rod that could lead to failure of the elevator control rod, possibly resulting in loss of control of the glider. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within 30 days after the effective date of this AD, inspect the elevator control rod in the vertical fin following Glasfaser Flugzeug-Service GmbH Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011 (EASA translation approval dated September 9, 2011), as applicable to glider model.

(2) If you find any discrepancy in the inspection required by paragraph (f)(1) of this AD, before further flight, replace the elevator control rod with an elevator control rod that does not have a control bore hole, following Glasfaser Flugzeug-Service GmbH Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011 (EASA translation approval dated September 9, 2011), as applicable to glider model.

(3) Within 9 months after the effective date of this AD, unless already done as required by paragraph (f)(2) of this AD, replace the elevator control rod in the vertical fin with

an elevator control rod that does not have a control bore hole, following Glasfaser Flugzeug-Service GmbH Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011 (EASA translation approval dated September 9, 2011), as applicable to glider model.

(4) As of the effective date of this AD, do not install an elevator control rod with a control bore hole on the side.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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.

(3) *Reporting Requirements:* For any reporting requirement in this AD, 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.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2011–0213R1, dated November 8, 2011; and Glasfaser Flugzeug-Service GmbH Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011 (EASA translation approval dated September 9, 2011), for related information. For service information related to this AD, contact Glasfaser Flugzeug-Service Hansjörg Streifeneder GmbH, D–72582 Grabenstetten, Germany; phone: +49(0)73821032, fax: +49(0)73821629; email: *info@streifly.de;* Internet: *www.streifly.de/.* 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.

Issued in Kansas City, Missouri, on January 11, 2012.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–928 Filed 1–18–12; 8:45 am]

BILLING CODE 4910–13–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3015

[Docket No. RM2012–3; Order No. 1108]

Competitive Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is initiating a review to determine whether competitive products provide the appropriate minimum contribution to the Postal Service's institutional costs. This document invites comments to facilitate examination of this question.

DATES: *Comments are due:* March 5, 2012. *Reply comments are due:* April 2, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at *stephen.sharfman@prc.gov* or (202) 789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Invitation To Comment
III. Ordering Paragraphs

I. Introduction

The Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3218 (2006), directs the Commission to promulgate regulations to ensure that competitive products, collectively, bear an ''appropriate share'' of the Postal Service's institutional costs. *See* 39 U.S.C. 3633(a)(3).

The initial Commission review of this issue determined that competitive products, collectively, annually should contribute a minimum of 5.5 percent of the institutional costs of the Postal Service. Order No. 43, October 29, 2007, paras. 3040–47. The PAEA further directs the Commission to revisit this question every 5 years. *See* 39 U.S.C. 3633(b).[1]

Five years has passed since enactment of the PAEA. The Commission initiates Docket No. RM2012–3 to evaluate how to ensure that the appropriate minimum contribution to the Postal Service's institutional costs is provided by competitive products. The Commission will decide whether its rule 3015.7(c), established in Order No. 43, which sets the 5.5 percent minimum contribution, should be retained in its current form, modified, or eliminated.

When establishing the initial level of appropriate contribution from competitive products, the Commission tried to balance the risk of setting the contribution level too high with the risk of setting it too low. Given a very competitive marketplace where the Postal Service's market share is relatively small, setting the contribution level too high could adversely affect the Postal Service's ability to compete. On the other hand, establishing a markup that is too low could give the Postal Service an artificial competitive advantage. The Commission gave considerable weight to the historical contribution made by items categorized as competitive products by the PAEA. The Commission set the minimum contribution level at 5.5 percent of total institutional costs, in line with the competitive products' estimated contribution to institutional costs of 5.4 percent in FY 2005 and 5.7 percent in FY 2006.

Since rule 3015.7(c) has been in place, the Postal Service's competitive products collectively have covered more than 5.5 percent of the Postal Service's institutional costs. For FY 2007, the revenue from competitive products minus their attributable costs equaled 5.66 percent of total institutional costs.[2] For FY 2008, the contribution from

[1] REVIEW OF MINIMUM CONTRIBUTION.—Five years after the date of enactment of this section, and every 5 years thereafter, the Postal Regulatory Commission shall conduct a review to determine whether the institutional costs contribution requirement under subsection (a)(3) should be retained in its current form, modified, or eliminated. In making its determination, the Commission shall consider all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products.

[2] FY 2007 Annual Compliance Determination, March 28, 2008, at 113.

competitive products represented 5.54 percent of total institutional costs.[3] The contribution from competitive products to the recovery of the Postal Service's institutional costs was 6.78 percent in FY 2009 and 7.12 percent in FY 2010.[4] In FY 2009 and FY 2010, institutional costs were reduced compared with previous years, due in part to the congressionally mandated reductions of the required annual contribution to the Retirement Health Benefits Fund. The Postal Service also has increasingly exercised its flexibility to transfer mail volume from market dominant products to competitive products. *See* 39 U.S.C. 3642.

On December 29, 2011, the Postal Service filed its 2011 Annual Compliance Report with the Commission. That report indicates that in FY 2011 competitive products collectively contributed 7.84 percent of the Postal Service's institutional costs.[5]

II. Invitation To Comment

The Commission invites comments to facilitate its examination of the appropriateness of the current contribution level. To inform its deliberations, the Commission requests comments from interested members of the public on whether and how changes in competitive market conditions, the allocation of costs to competitive products, the number and volume of competitive products, or any other changes should impact the minimum appropriate share of institutional costs of the Postal Service that should be provided by competitive products. As required by the statute, the Commission in making its determination must consider all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products. Comments also are welcome on any issues relevant to the reasonableness of the current 5.5 percent contribution requirement and retaining, modifying, or eliminating it.

Comments are due March 5, 2012. Reply comments may be submitted on or before April 2, 2012.

Pursuant to 39 U.S.C. 505, R. Kevin Harle is designated as the officer of the Commission to represent the interests of the general public (Public Representative). The Public Representative will direct the activities of Commission personnel assigned to him and, upon request, will provide their names for the record. Neither the Public Representative nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2012–3, in compliance with 39 U.S.C. 3633(b).
2. The Commission designates R. Kevin Harle as the Public Representative representing the interests of the general public in this proceeding.
3. Comments are due March 5, 2012.
4. Reply comments are due April 2, 2012.
5. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–851 Filed 1–18–12; 8:45 am]

BILLING CODE 7710–FW–P

[3] FY 2008 Annual Compliance Determination, March 30, 2009, at 87.

[4] FY 2009 Annual Compliance Determination, March 29, 2010, at 117; FY 2010 Annual Compliance Determination, March 29, 2011, at 138.

[5] *See* Docket No. ACR2011, FY 2011 Annual Compliance Report, December 29, 2011, at 64. Competitive products contribution, $2.317 billion, divided by total institutional costs, $29.554 billion.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2011–0797; FRL–9619–5]

RIN 2060–AQ–92

National Emission Standards for Hazardous Air Pollutants: Primary Aluminum Reduction Plants; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The EPA is announcing that the period for providing public comments on the December 6, 2011, proposed rule titled, ''National Emission Standards for Hazardous Air Pollutants: Primary Aluminum Reduction Plants'' is being extended for 12 days.

DATES: *Comments.* The public comment period for the proposed rule published December 6, 2011, (76 FR 76260) is being extended for 12 days to February 1, 2012, in order to provide the public additional time to submit comments and supporting information.

ADDRESSES: *Comments.* Written comments on the proposed rule may be submitted to EPA electronically, by mail, by facsimile or through hand delivery/courier. Please refer to the proposal for the addresses and detailed instructions.

Docket. Publicly available documents relevant to this action are available for public inspection either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, 1301 Constitution Avenue 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. A reasonable fee may be charged for copying.

World Wide Web. The EPA Web site for this rulemaking is at: *http://www.epa.gov/ttn/atw/alum/alumpg.html.*

FOR FURTHER INFORMATION CONTACT: Mr. David Putney, Metals and Inorganic Chemicals Group (D243–02), Sector Policies and Programs Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; Telephone number: (919) 541–2016; Fax number (919) 541–3207; Email address: *putney.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comment Period

Due to requests received from industry to extend the public comment period, the EPA is extending the public comment period for an additional 12 days. Therefore, the public comment period will end on February 1, 2012, rather than January 20, 2012.

How can I get copies of this document and other related information?

The EPA has established the official public docket No. EPA–HQ–OAR–2011–0797. The EPA has also developed a Web site for the proposed rulemaking at the addresses given above.

Dated: January 12, 2012.

Gina McCarthy,

Assistant Administrator.

[FR Doc. 2012–962 Filed 1–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2008–0476; FRL–9619–4]

EPA Responses to State and Tribal 2008 Ozone Designation Recommendations; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The EPA is announcing the extension of the public comment period for the EPA's responses to state and tribal ozone designation recommendations for the 2008 Ozone National Ambient Air Quality Standards. The EPA sent the responses directly to the states and tribes on or about December 9, 2011. On December 20, 2011 (76 FR 78872, FRL–9608–6), the EPA published a notice in the **Federal Register** that the EPA had posted the responses on its Internet Web site and the EPA invited public comment. In the notice, the EPA stated that public comments must be received on or before January 19, 2012. The EPA has received several requests from stakeholders for additional time to prepare their comments. Some of the requesters noted that the original 30-day comment period fell across two federal holidays. Taking that into consideration, the EPA is extending the comment period until February 3, 2012. The EPA intends to make final designation determinations for the 2008 ozone standards in spring 2012.

DATES: Comments must be received on or before February 3, 2012. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–OAR–HQ–2008–0476, by one of the following methods:

- *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov. Attention Docket ID No. EPA–HQ–OAR–2008–0476*.
- *Fax:* (202) 566–9744. *Attention Docket ID No. EPA–HQ–OAR–2008–0476*.
- *Mail:* Air Docket, *Attention Docket ID No. EPA–HQ–OAR–2008–0476,* Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue NW., Room 3334, 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–2008–0476. 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 *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information or other information whose disclosure is restricted by statute. Do not submit information that you consider to be confidential business information or otherwise protected through *www.regulations.gov* or email. The *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 email comment directly to the EPA without going through *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 is unable to read your comment and cannot contact you for clarification due to technical difficulties, 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*. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *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 in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue 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, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general questions concerning this action, please contact Carla Oldham, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Planning Division, C539–04, Research Triangle Park, NC 27711, telephone (919) 541–3347, email at *oldham.carla@epa.gov.* For questions regarding the EPA Region 1, please contact Richard Burkhart, U.S. EPA, telephone (617) 918–1664, email at *burkhart.richard@epa.gov*. For questions regarding the EPA Region 2, please contact Bob Kelly, U.S. EPA, telephone (212) 637–3709, email at *kelly.bob@epa.gov*. For questions regarding the EPA Region 3, please contact Maria Pino, U.S. EPA, telephone (215) 814–2181, email at *pino.maria@epa.gov*. For questions regarding the EPA Region 4, please contact Jane Spann, U.S. EPA, telephone (404) 562–9029, email at *spann.jane@epa.gov*. For questions regarding the EPA Region 5, please contact Edward Doty, U.S. EPA, telephone (312) 886–6057, email at *doty.edward@epa.gov*. For questions regarding the EPA Region 6, please contact Guy Donaldson, U.S. EPA, telephone (214) 665–7242, email at *donaldson.guy@epa.gov*. For questions regarding the EPA Region 7, please contact Lachala Kemp, U.S. EPA, telephone (913) 551–7214, email at *kemp.lachala@epa.gov*. For questions regarding the EPA Region 8, please contact Scott Jackson, U.S. EPA, telephone (303) 312–6107, email at *jackson.scott@epa.gov*. For questions regarding the EPA Region 9, please contact John J. Kelly, U.S. EPA, telephone (415) 947–4151, email at *kelly.johnj@epa.gov*. For questions regarding EPA Region 10, please contact Claudia Vaupel, U.S. EPA, telephone (206) 553–6121, email at *vaupel.claudia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for the EPA?

1. *Submitting Confidential Business Information.* Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be confidential business information. For confidential business information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as confidential business information and then identify electronically within the disk or CD ROM the specific information that is claimed as confidential business information. In addition to one complete version of the comment that includes information claimed as confidential business information, a copy of the comment that does not contain the information

claimed as confidential business information 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. Send or deliver information identified as confidential business information only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone (919) 541–0880, email at *morales.roberto@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2008–0476.

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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

B. Where can I get a copy of this document and other related information?

The EPA has established a docket for the ozone designations rulemaking for the 2008 ozone standards at EPA–HQ–OAR–2008–0476. In addition, the EPA has established a Web site for the ozone designations rulemaking at *www.epa.gov/ozonedesignations*. The Web site includes the state and tribal designation recommendations, information supporting the EPA's preliminary designation decisions, as well as the rulemaking actions and other related information that the public may find useful.

Dated: January 12, 2012.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2012–957 Filed 1–18–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 204

[DFARS Case 2012–D002]

RIN 0750–AH56

Defense Federal Acquisition Regulation Supplement: Order of Application for Modifications

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to establish an order for application of contract modifications to resolve any potential conflicts that may arise from multiple modifications with the same effective date.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before March 19, 2012, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS case 2012–D002, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''DFARS Case 2012–D002'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2012–D002.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2012–D002'' on your attached document.

○ *Email: dfars@osd.mil.* Include DFARS Case 2012–D002 in the subject line of the message.

○ *Fax:* (703) 602–0350.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, (703) 602–0310.

SUPPLEMENTARY INFORMATION:

I. Background

The Defense Federal Acquisition Regulation Supplement (DFARS) subpart 204.70, Uniform Procurement Instrument Identification Numbers, prescribes numbering procedures for contract modifications and the Federal Acquisition Regulation (FAR) part 43.1, General, prescribes rules for determining the effective date. There are no rules to describe in what order to apply modifications to determine the actual content of a resulting modified contract. In order to determine the sequence of modifications to a contract or order, a method for determining the order of application for modifications is needed to resolve any conflict arising from multiple modifications with the same effective date. As such, this rule proposes to add DFARS text at 204.7007, Order of Application for Modifications, to resolve any potential inconsistency.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule only affects the internal operating processes of DoD by clarifying an order of application for contract modifications, and it does not have an economic impact on contractors. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The objective for this case is to provide a set of rules to the contracting officer to resolve any potential conflict from multiple modifications with the same effective date. The changes

required to the DFARS by this case only affect the internal operating processes of DoD by establishing an order of application for contract modifications. These changes are not expected to have a significant economic impact on contractors.

This rule does not impose any new reporting or recordkeeping requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules. The alternative to this rule is to continue relying on DFARS subpart 204.70, which prescribes numbering procedures for contract modifications, and FAR subpart 43.1, which provides guidelines for determining the effective date. However, the cited text does not provide a clear structured path to ensure no ambiguity arises when determining what order to apply modifications.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2012–D002) in the correspondence.

IV. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 204

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 204 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 204 is revised to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

2. Add section 204.7007 to read as follows:

204.7007 Order of application for modifications.

(a) Circumstances may exist in which the numeric order of the modifications to a contract is not the order in which the changes to the contract actually take effect.

(b) In order to determine the sequence of modifications to a contract or order, the modifications will be applied in the following order:

(1) Modifications will be applied in order of the effective date on the modification.

(2) In the event of two or more modifications with the same effective date, modifications will be applied in signature date order.

(3) In the event of two or more modifications with the same effective date and the same signature date, procuring contracting office modifications will be applied in numeric order, followed by contract administration office modifications in numeric order.

[FR Doc. 2012–969 Filed 1–18–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 215, 217, 219, 225, 239, 241, 242, 244, and 252

[DFARS Case 2011–D040]

RIN 0750–AH49

Defense Federal Acquisition Regulation Supplement; Definition of Cost or Pricing Data

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing the definition of cost or pricing data. The DFARS changes are necessary to ensure consistency with the Federal Acquisition Regulation (FAR).

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before March 19, 2012, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2011–D040, using any of the following methods:

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

Submit comments via the Federal eRulemaking portal by Inserting ''DFARS Case 2011–D040'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2011–D040.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2011–D040'' on your attached document. Follow the instructions for submitting comments.

Email: dfars@osd.mil. Include DFARS Case 2011–D040 in the subject line of the message.

Fax: (703) 602–0350.

Mail: Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

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

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, (703) 602–0302.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to update the DFARS for consistency with FAR changes addressing the definition of cost or pricing data, published at 75 FR 53135 on August 30, 2010.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

This rule proposes to update the Defense Federal Acquisition Regulation Supplement (DFARS) for consistency with Federal Acquisition Regulation (FAR) changes addressing the definition of cost or pricing data, published at 75 FR 53135 on August 30, 2010. DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory

Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule merely aligns the DFARS with the FAR. However, an initial regulatory flexibility analysis has been performed consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein.

The rule does not expand or diminish the existing rights of the contracting officer to obtain cost data or pricing data. Instead, this rule will benefit all entities, both large and small, by clarifying the requirements for the submission of ''certified cost or pricing data'' and ''data other than certified cost or pricing data.''

There are no projected reporting or recordkeeping requirements associated with this rule. The rule does not duplicate, overlap, or conflict with any other Federal rules. No known significant alternatives to the rule have been identified.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D040) in correspondence.

IV. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 204, 215, 217, 219, 225, 239, 241, 242, 244, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 204, 215, 217, 219, 225, 239, 241, 242, 244, and 252 as follows:

1. The authority citation for 48 CFR parts 204, 215, 217, 219, 225, 239, 241, 242, 244, and 252 is revised to read as follows:

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

PART 204—ADMINISTRATIVE MATTERS

204.805 [Amended]

2. Section 204.805 is amended in paragraph (5) by removing ''subject to cost or pricing data'' and adding ''subject to certified cost or pricing data'' in its place.

PART 215—CONTRACTING BY NEGOTIATION

3. Section 215.403 is amended by revising the section heading to read as follows:

215.403 Obtaining certified cost or pricing data.

215.403–1 [Amended]

4. Section 215.403–1 is amended by—

a. Revising the section heading to read as set forth below;

b. In paragraph (b) and the heading of paragraph (c) removing ''*cost or pricing data requirements*'' and adding ''*certified cost or pricing data requirements*'' in its place;

c. In paragraph (c)(4)(C) and the introductory text of paragraph (c)(4)(D) removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place;

d. In paragraph (c)(4)(D)(*1*) removing ''information other than cost or pricing data'' and adding ''data other than certified cost or pricing data'' in its place; and

e. In paragraph (c)(4)(D)(*2*) removing ''Cost or pricing data'' and adding ''Certified cost or pricing data'' in its place and removing ''cost or pricing data threshold'' and adding ''certified cost or pricing data threshold'' in its place.

The revision reads as follows:

215.403–1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306A and 41 U.S.C. 3503.

* * * * *

5. Section 215.403–3 is amended by revising the section heading to read as follows:

215.403–3 Requiring data other than certified cost or pricing data.

* * * * *

6. Section 215.404–2 is amended by revising the section heading to read as follows:

215.404–2 Data to support proposal analysis.

* * * * *

215.404–4 [Amended]

7. Section 215.404–4 is amended by—

a. In the introductory text of paragraph (b)(1) removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place;

b. At the end of paragraph (c)(2)(A) removing ''.'' and adding ''; and'' in its place;

c. In paragraph (c)(2)(C)(*1*)(*i*) removing ''cost or pricing data threshold'' and adding ''certified cost or pricing data threshold'' in its place;

d. At the end of paragraph (c)(2)(C)(*2*) removing ''.'' and adding '';'' in its place; and

e. At the end of paragraph (c)(2)(D) removing ''.'' and adding ''; and'' in its place.

215.407–5–70 [Amended]

8. Section 215.407–5–70 is amended in paragraphs (b)(2)(i) and (ii) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

215.408 [Amended]

9. Section 215.408 is amended in paragraphs (1)(i) through (iii) by removing ''Cost or Pricing Data'' and adding ''Certified Cost or Pricing Data'' in its place and in paragraph (2) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

PART 217—SPECIAL CONTRACTING METHODS

217.7406 [Amended]

10. Section 217.7406 is amended in paragraph (b)(3) by removing ''of cost or pricing data'' and adding ''of certified cost or pricing data'' in its place and removing ''and cost or pricing data'' and adding ''and certified cost or pricing data'' in its place.

PART 219—SMALL BUSINESS PROGRAMS

219.806 [Amended]

11. Section 219.806 is amended in paragraph (1) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place and removing ''FAR Subpart 15.4'' and adding ''FAR subpart 15.4'' in its place.

PART 225—FOREIGN ACQUISITION

225.7303 [Amended]

12. Section 225.7303 is amended in paragraph (b) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

225.7304 [Amended]

13. Section 225.7304 is amended in paragraph (c) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place and in paragraph (e)(3) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place and removing ''Subpart 201.4'' and adding ''subpart 201.4'' in its place.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

14. Section 239.7406 is amended by revising the section heading to read as set forth below and in paragraph (a) removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

239.7406 Certified cost or pricing data and data other than certified cost or pricing data.

* * * * *

PART 241—ACQUISITION OF UTILITY SERVICES

241.201 [Amended]

15. Section 241.201 is amended in paragraph (3)(ii) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place and removing ''FAR Subpart 15.4'' and adding ''FAR subpart 15.4'' in its place.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.7203 [Amended]

16. Section 242.7203 is amended in paragraph (b) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

242.7302 [Amended]

17. Section 242.7302 is amended in paragraph (a)(2) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

242.7502 [Amended]

18. Section 242.7502 is amended in paragraph (g)(3)(ii) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

244.305–70 [Amended]

19. Section 244.305–70 is amended in paragraph (f)(3)(ii) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.209–7009 [Amended]

20. Section 252.209–7009 is amended by removing the clause date ''(DEC 2010)'' and adding ''(DATE)'' in its place, redesignating paragraphs (a)(1) and (2) as (a)(i) and (ii), and in newly designated paragraph (a)(i) removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

252.215–7000 [Amended]

21. Section 252.215–7000 is amended by removing the clause date ''(DEC 1991)'' and adding ''(DATE)'' in its place and removing ''Cost or Pricing Data—Modifications'' and adding ''Certified Cost or Pricing Data—Modifications'' in its place wherever it appears.

252.215–7002 [Amended]

22. Section 252.215–7002 is amended by—

a. Removing the clause date ''(MAY 2011)'' and adding ''(DATE)'' in its place;

b. In paragraph (c)(1) removing ''subcontracts,'' and adding ''subcontracts'' in its place and removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place; and

c. In paragraph (c)(2)(i) removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

252.217–7027 [Amended]

23. Section 252.217–7027 is amended by removing the clause date ''(OCT 1998)'' and adding ''(DATE)'' in its place, in paragraph (a) removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place, and in paragraph (b) removing ''*cost or pricing data*'' and adding ''*certified cost or pricing data*'' in its place.

252.243–7002 [Amended]

24. Section 252.243–7002 is amended by removing the clause date ''(MAR 1998)'' and adding ''(DATE)'' in its place, in paragraph (c)(1) removing ''Cost or pricing data'' and adding ''Certified cost or pricing data,'' in its place, and in paragraph (c)(2) removing ''Information other than cost or pricing data'' and adding ''Data other than certified cost or pricing data'' in its place and removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

[FR Doc. 2012–971 Filed 1–18–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 242

[DFARS Case 2011–D054]

RIN 0750–AH52

Defense Federal Acquisition Regulation Supplement; DoD Voucher Processing

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update DoD's voucher processing procedures and better accommodate the use of Wide Area WorkFlow to process vouchers.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before March 19, 2012, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2011–D054, using any of the following methods:

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

Submit comments via the Federal eRulemaking portal by inserting ''DFARS Case 2011–D054'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2011–D054.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2011–D054'' on your attached document. Follow the instructions for submitting comments.

Email: dfars@osd.mil. Include DFARS Case 2011–D054 in the subject line of the message.

Fax: (703) 602–0350.

Mail: Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

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

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, (703) 602–0302.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to revise requirements for approving interim vouchers. Interim vouchers that are selected using sampling methodologies will be reviewed and approved by the contract auditors for provisional payment and sent to the disbursing office after a pre-payment review. Interim vouchers not selected for a pre-payment review will be considered to be provisionally approved and will be sent directly to the disbursing office. All provisionally approved interim vouchers are subject to a later audit of actual costs incurred.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to revise requirements for approving interim vouchers. DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule merely updates DoD's internal voucher processing procedures and better accommodates the use of Wide Area WorkFlow to process vouchers.

There are no projected reporting or recordkeeping requirements associated with this rule. The rule does not duplicate, overlap, or conflict with any other Federal rules. No known significant alternatives to the rule have been identified.

At this time, DoD is unable to estimate the number of small entities to which this rule will apply. Therefore, DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D054) in correspondence.

IV. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 242

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 242 is proposed for amendment as follows:

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

1. The authority citation for 48 CFR part 242 is revised to read as follows:

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

2. In § 242.803 revise paragraph (b)(i) to read as follows:

242.803 Disallowing costs after incurrence.

* * * * *

(b) * * *

(i) The contract auditor is the authorized representative of the contracting officer for—

(A) Receiving vouchers from contractors and approving interim vouchers when directed by the terms of the contract;

(B) Approving interim vouchers that were selected using DCAA sampling methodologies for provisional payment and sending them to the disbursing office after a pre-payment review. Interim vouchers not selected for a pre-payment review will be considered to be provisionally approved and will be sent directly to the disbursing office. All provisionally approved interim vouchers are subject to a later audit of actual costs incurred;

(C) Reviewing completion/final vouchers and sending them to the administrative contracting officer; and

(D) Issuing DCAA Forms 1, Notice of Contract Costs Suspended and/or Disapproved, to deduct costs where allowability is questionable.

* * * * *

[FR Doc. 2012–990 Filed 1–18–12; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register

Vol. 77, No. 12

Thursday, January 19, 2012

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.

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2012–0003]

Proposed Collection; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (the ''CFPB'' or the ''Bureau''), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. The Bureau is soliciting comments regarding a proposed information collection to identify financial education strategies that are effective in educating consumers to make better informed financial decisions, pursuant to the Bureau's authorities under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203.

DATES: Written comments are encouraged and must be received on or before March 19, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number CFPB–2012–0003, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Chris Willey, Consumer Financial Protection Bureau, 1500 Pennsylvania Avenue NW. (Attn: 1801 L Street), Washington, DC 20220.
- *Hand Delivery/Courier in Lieu of Mail:* Chris Willey, Consumer Financial Protection Bureau, 1801 L Street NW., Washington, DC 20036.

All submissions must include the agency name and docket number for this notice. In general all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Monica Jackson, Consumer Financial Protection Bureau, (202) 435–7275.

SUPPLEMENTARY INFORMATION:

Title: Clearance for Financial Education Program Evaluation.

OMB Number: 3170–XXXX.

Summary of Collection: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, the Bureau's Office of Financial Education (''OFE'') is responsible for developing and implementing a strategy to improve the financial literacy of consumers that includes measurable goals and initiatives, in consultation with the Financial Literacy and Education Commission, consistent with the National Strategy for Financial Literacy. The collection will focus on financial education program elements related to increasing household non-retirement savings and/or reducing financial distress.

The CFPB expects to collect quantitative and qualitative data through in-person, telephone, or Internet based surveys. The information collected through quantitative and qualitative evaluation methods will increase OFE's understanding of what interventions can improve financial decisionmaking skills and outcomes for consumers.

The core objective of the data collection is to measure the effectiveness of selected financial education programs. This data will provide useful information on evidence-based practices that can be used to improve financial education programs nationwide, leading to better financial decisionmaking outcomes for adult consumers.

Type of Review: New Collection.

Affected Public: Individuals.

Annual Burden Estimates: Below is a preliminary estimate of the aggregate burden hours for the evaluation of five (5) financial education programs.

Process	Number of respondents	Number of responses per respondent	Average burden per response (minutes)	Total burden (hours)
In-person baseline surveys	2000	1	60	2000
Travel time to sites	2000		60	2000
Internet or phone-based follow-up surveys	2000	4	60	4000
Total				8000

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 proposed collection of information, 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 respondents, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Dated: January 13, 2012.

Chris Willey,

Chief Information Officer, Consumer Financial Protection Bureau.

[FR Doc. 2012–986 Filed 1–18–12; 8:45 am]

BILLING CODE P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2012–0001]

Proposed Collection; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: The Consumer Financial Protection Bureau (CFPB), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on a proposed revision to an information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. The CFPB is soliciting comments regarding the information collection requirements under OMB control number 3170–0001, Report of Terms of Credit Card Plans.

DATES: Written comments must be received on or before March 19, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0001, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.
- *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Dan Quan, Research, Markets & Regulations, at (202) 435–7678.

SUPPLEMENTARY INFORMATION:

Title: Report of Terms of Credit Card Plans.

OMB Control Number: 3170–0001.

Abstract: Section 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, transferred the authority to conduct the semiannual Report of Terms of Credit Card, from the Federal Reserve Board to the CFPB on July 21, 2011. About 150 credit card issuers, including the 25 largest issuers as measured by outstanding credit card receivables, report the information on credit card pricing and fees. Previously, the information was collected under OMB control number 7100–0239, Form Number 2572. Much of the information collected through the approved information collection is now widely available and in greater detail on third-party credit card shopping Web sites. The CFPB is looking for ways to make the report more informative and helpful for consumers.

Type of Review: Revision of a currently approved collection.

Affected Public: Credit Card issuers.

Estimated Total Annual Burden Hours: 75.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether the collection of information is necessary for the proper performance of the CFPB, including whether the information will have practical utility; (b) the accuracy of the above estimate of the burden of the information collection; (c) ways to enhance the quality, usefulness, 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 appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: January 9, 2012.

Chris Willey,

Chief Information Officer, Consumer Financial Protection Bureau.

[FR Doc. 2012–987 Filed 1–18–12; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2012–0002]

Agency Information Collection Activities; Renewal of Currently Approved Collections; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (CFPB or the Bureau) is soliciting comments concerning the currently approved information collections associated with certain recently published interim final rules. This notice is published by the CFPB as part of its continuing effort to reduce paperwork and respondent burden. The public and other Federal agencies are invited to take this opportunity to comment on this information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Comments must be received on or before March 19, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number CFPB–2012–0002 and the relevant OMB control numbers listed below, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Chris Willey, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

• *Hand Delivery/Courier in Lieu of Mail:* Chris Willey, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

In general, all comments will be posted without change to *http://www.regualtions.gov*. In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be obtained by contacting Chris Willey, Chief Information Officer, Consumer Financial Protection Bureau, 1700 G Street, Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the CFPB as of July 21, 2011.[1] In December 2011, the CFPB republished the regulations implementing those laws with technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. Prior to the republication, the CFPB obtained emergency approvals from the Office of Management and Budget (OMB) for the information collections for which the CFPB had administrative enforcement authority under these regulations.

The burden hours associated with the collections identified below are not new burden hours. Rather, they are transfers of burden hours from the transferor agencies. In obtaining emergency approval, the CFPB's estimates of the burden of the following information collections were based on the assumption that the total ongoing burden for these regulations, across all agencies, remained the same as it was before the regulations were restated by the CFPB. Furthermore, the CFPB primarily relied on the estimates previously developed by the transferor agencies concerning the number of entities subject to the regulations and the hours of paperwork burden under the statutes. To comply with the requirements under 44 U.S.C. 3506, the CFPB requests public comment on the following collections:

OMB Number: 3170–0002.

Type of Review: Extension.

Title: Fair Credit Reporting Act (Regulation V) 12 CFR Part 1022.

Description: The consumer disclosures included in Regulation V are designed to alert consumers that a financial institution furnished negative information about them to a consumer reporting agency, that they have a right to opt out of receiving marketing materials and credit or insurance offers, that their credit report was used in setting the material terms of credit that may be less favorable than the terms offered to consumers with better credit histories, that they maintain certain rights with respect to a theft of their identity that they reported to a consumer reporting agency, that they maintain rights with respect to knowing what is in their consumer reporting agency file, that they can request a free credit report, and that they can report a theft of their identity to the CFPB. Consumers then can use the information provided to consider how and when to check and use their credit reports. These disclosures are substantially the same as those previously provided by model forms promulgated by the Board, the FDIC, the NCUA, the OCC, the OTS and the FTC.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 4,737,000 hours.

OMB Number: 3170–0004.

Type of Review: Extension.

Title: Truth in Savings (Regulation DD) 12 CFR 1030.

Description: Federal agencies use the records to ascertain whether accurate and complete disclosures of depository accounts have been provided to consumers. This information also provides the primary evidence of law violations in Truth in Savings (TISA) enforcement actions brought by the CFPB and other agencies. Without the Regulation DD recordkeeping requirement, the agencies' abilities to enforce TISA would be significantly impaired. Consumers rely on the disclosures required by TISA and Regulation DD to facilitate informed decisionmaking regarding deposit accounts offered at depository institutions. Without this information, consumers would be severely hindered in their ability to assess the true costs and terms of the deposit accounts offered. These disclosures and provisions are necessary for the enforcement agencies to enforce TISA and Regulation DD.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 23,000 hours.

OMB Number: 3170–0005.

Type of Review: Extension.

Title: Secure and Fair Enforcement for Mortgage Licensing Act (Regulation G) 12 CFR Part 1007.

Description: The information collection will improve the flow of information to and between regulators; provide accountability and tracking of mortgage loan originators (MLOs), enhance consumer protections, reduce fraud in the residential mortgage loan origination process and provide consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, MLOs.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 15,000 hours.

OMB Number: 3170–0006.

Type of Review: Extension.

Title: Consumer Leasing Act (Regulation M) 12 CFR Part 1013.

Description: Federal and state enforcement and private litigants use the records to ascertain whether accurate and complete disclosures of the cost of leases have been provided to consumers prior to consummation of the lease. This information provides the primary evidence of law violations in Consumer Leasing Act (CLA) enforcement actions brought by Federal agencies. Without Regulation M's recordkeeping requirement, the agencies' ability to enforce the CLA would be significantly impaired. As noted above, consumers rely upon the disclosures required by the CLA and Regulation M for information to comparison shop among leases, as well as to ascertain the true costs and terms of lease offers. Enforcement agencies and private litigants need the information in these disclosures and other requirements to enforce the CLA and Regulation M.

Respondents: Businesses or other for-profits.

[1] The seven Federal agencies are the Board of Governors (Board), the Federal Deposit Insurance Corporation (FDIC), the Federal Trade Commission (FTC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and the Department of Housing and Urban Development (HUD) (collectively, the transferor agencies). *See* Section 1061(a)(2) of the Dodd-Frank Act.

Estimated Total Reporting Burden: 100,000 hours.

OMB Number: 3170–0007.

Type of Review: Extension.

Title: Mortgage Assistance Relief Services (Regulation O) 12 CFR Part 1015.

Description: The required disclosures under Regulation O assist prospective purchasers of mortgage assistance relief services (MARS) in making well-informed decisions and avoiding deceptive and unfair acts and practices. The information that must be kept under Regulation O's recordkeeping requirements is used by the CFPB and other relevant agencies for enforcement purposes and to ensure compliance by MARS providers with Regulation O. The information is requested only on a case-by-case basis.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 32,500 hours.

OMB Number: 3170–0008.

Type of Review: Extension.

Title: Home Mortgage Disclosure Act (Regulation C) 12 CFR Part 1003.

Description: The Home Mortgage Disclosure Act (HMDA) requires most mortgage lenders lending in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must report those data to the appropriate Federal agencies and make the data available to the public. The CFPB's regulation requires covered financial institutions that meet certain thresholds to maintain data about home loan applications (*e.g.,* the type of loan requested, the purpose of the loan, whether the loan was approved, and the type of purchaser if the loan was later sold), to update the information quarterly, and to report the information annually. The purpose of the information collection is: (i) To help determine whether financial institutions are serving the housing needs of their communities; (ii) to assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and (iii) to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. The information collection will assist the CFPB's examiners, and examiners of other Federal supervisory agencies, in determining that the financial institutions they supervise comply with applicable provisions of HMDA.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 154,000 hours.

OMB Number: 3170–0009.

Type of Review: Extension.

Title: Mortgage Acts and Practices (Regulation N) 12 CFR Part 1014.

Description: The Omnibus Appropriations Act, as clarified by Section 511 of the Credit CARD Act, and as amended by Section 1097 of the Dodd-Frank Act directs the CFPB to issue rules that ''relate to unfair or deceptive acts or practices'' regarding mortgage loans. Regulation N prohibits misrepresentations about the terms of mortgage credit products in commercial communications and requires that covered persons keep certain related records for a period of twenty-four (24) months from last dissemination. Specifically, Regulation N requires covered persons to retain: (1) Copies of all materially different commercial communications disseminated, including but not limited to sales scripts, training materials, related marketing materials, Web sites, and weblogs; (2) documents describing or evidencing all mortgage credit products available to consumers during the time period in which each commercial communication was disseminated, including but not limited to the names and terms of each such mortgage credit product available to consumers; and (3) documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in which each commercial communication was disseminated, including but not limited to the names and terms of each such additional product or service available to consumers. A failure to keep such records is a violation of Regulation N. The information that Regulation N requires covered persons to retain is necessary to ensure efficient and effective law enforcement to address deceptive practices that occur in the mortgage advertising area. To gauge whether covered persons are complying with Regulation N or making prohibited misrepresentations, it is necessary to review the commercial communications that were disseminated and the information about the mortgage credit products and relevant additional products or services available during the time period in which each commercial communication was disseminated. Furthermore, a strong recordkeeping provision is necessary to foster effective enforcement of Regulation N.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 1,950,000 hours. This estimation reflects a correction to an error in the reporting burden included in the initial ICR for this collection. The previous submission included the entire burden under Regulation N. The current submission includes only the burden attributable to the CFPB.

OMB Number: 3170–0010.

Type of Review: Extension.

Title: Privacy of Consumer Financial Information (Regulation P) 12 CFR Part 1016.

Description: Section 502 of the Gramm-Leach-Bliley Act (GLB Act) (Pub. L. 106–102) generally prohibits a financial institution from sharing nonpublic personal information about a consumer with nonaffiliated third parties unless the institution satisfies various disclosure requirements (including provision of initial privacy notices, annual notices, notices of revisions to the institution's privacy policy, and opt-out notices) and the consumer has not elected to opt out of the information sharing. The CFPB is promulgating regulations to implement the GLB Act's notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 516,000 hours.

OMB Number: 3170–0012.

Type of Review: Extension.

Title: Interstate Land Sales Full Disclosure Act (Regulations J, K, and L) 12 CFR Part 1010.

Description: The respondents are land developers (or attorneys or others who work for them). Developers must submit an initial Statement of Record (registration) to the CFPB and receive an effective date before they can offer lots for sale or lease. The Statement of Record includes the proposed property report and additional information and documents that support the developer's disclosures in the property report. The developer is responsible for ensuring that the registration is accurate and does not omit information needed for a purchaser to make an informed decision. Developers must give purchasers an effective property report before the purchaser signs the sales contract. Developers must submit amendments to their registrations if any information in their initial registration changes. They must also submit a consolidated filing if they offer additional lots for sale. Each year the developer must submit an annual financial statement and an annual report that is prepared in the format required by Section 1010.310 of the regulations. A developer may voluntarily suspend his registration by submitting a

Voluntary Suspension form or through the Annual Report. There are no other forms. The CFPB conducts a facial review of the submissions. The developer may request an Advisory Opinion if a developer has questions about the applicability of one of the exemptions from registration. A CFPB determination is required only if a developer claims an exemption from registration under the multiple site or substantial compliance exemption. The other 24 exemptions are self-determining. Finally, the CFPB may require additional information from developers in response to investigations of complaints. The Voluntary Suspension form is voluntary and is a convenient way for developers to voluntarily suspend their registration. The form is not required and is not the only way that developers may close their registration. They may also end their registration through their annual report.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 34,653 hours.

OMB Number: 3170–0013.

Type of Review: Extension.

Title: Equal Credit Opportunity Act (Regulation B) 12 CFR Part 1002.

Description: Federal and state enforcement agencies and private litigants use recordkeeping information to, for example, compare accepted and rejected applicants or the terms and conditions of accepted applicants in order to determine whether applicants are treated less favorably on the basis of race, sex, age, or other prohibited bases under the Equal Credit Opportunity Act (ECOA). Information derived from these records provides an important piece of evidence of law violations in ECOA enforcement actions brought by Federal agencies. Self-testing records (including for corrective action) are used by creditors to identify potential violations and reflect their efforts to correct the problem. Absent the Regulation B requirement that creditors retain monitoring information, the CFPB's and other agencies' ability to detect unlawful discrimination and enforce the ECOA would be significantly impaired. The CFPB, other agencies, and private litigants use adverse action notices, appraisal reports, and other information in the application file to compare applicants in order to determine whether any applicants are discriminated against on the basis of race/national origin, sex, marital status, age, or other prohibited bases under the ECOA. The adverse action notice requirement apprises applicants of their rights under the ECOA and of the basis for a creditor's decision. Applicants use their copy of the appraisal to review (and possibly challenge) the accuracy and/or fairness of the information contained within, and to determine the role that the appraisal played in the credit decision. Applicants use the self-testing disclosure to facilitate understanding of creditors' information collection, including its optionality.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 1,502,000 hours.

OMB Number: 3170–0014.

Type of Review: Extension.

Title: Electronic Fund Transfer Act (Regulation E) 12 CFR Part 1005.

Description: Federal agencies and private litigants use the records to ascertain whether accurate and complete disclosures of EFT services and other required actions (for example, error resolution and limitation of consumer liability for unauthorized transfers) have been provided. This information will provide the primary evidence of law violations in EFTA enforcement actions brought by the CFPB and other agencies. Without the Regulation E recordkeeping requirement, the agencies' abilities to enforce the EFTA would be significantly impaired. Consumers rely on the disclosures required by the EFTA and Regulation E to facilitate informed EFT decision making. Without this information, consumers would be severely hindered in their ability to assess the true costs and terms of the transactions offered. Also, without the special error resolution and limitation of consumer liability provisions, consumers would be unable to detect and correct errors in their EFT transactions and fraudulent transfers. These disclosures and provisions are necessary for enforcement agencies to enforce the EFTA and Regulation E.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 1,904,000 hours.

OMB Number: 3170–0015.

Type of Review: Extension.

Title: Truth in Lending Act (Regulation Z) 12 CFR Part 1026.

Description: Federal and state enforcement agencies and private litigants use records retained under the requirement of Regulation Z to ascertain whether accurate and complete disclosures of the cost of credit have been provided to consumers prior to consummation of the credit obligation and, in some instances, during the loan term. The information is also used to determine whether other actions required under the TILA, including complying with billing error resolution procedures and limitation of consumer liability for unauthorized use of credit, have been met. The information retained provides the primary evidence of law violations in TILA enforcement actions brought by Federal agencies. Without the Regulation Z recordkeeping requirement, the agencies' ability to enforce the TILA would be significantly impaired. As noted above, consumers rely on the disclosures required by the TILA and Regulation Z to shop among options and to facilitate informed credit decision making. Without this information, consumers would be severely hindered in their ability to assess the true costs and terms of financing offered. Also, without the special billing error information, consumers would be unable to detect and correct errors or fraudulent charges on their open-end credit accounts. Additionally, enforcement agencies and private litigants need the information in these disclosures to enforce the TILA and Regulation Z. See 15 U.S.C. 1607, 1640.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 6,467,000 hours.

OMB Number: 3170–0016.

Type of Review: Extension.

Title: Real Estate Settlement Procedures Act (Regulation X) 12 CFR Part 1024.

Description: Certain disclosures are required by the Real Estate Settlement Procedures Act (RESPA) of 1974, as amended by Section 461 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA), and other various amendments. Required disclosures include: The Good Faith Estimate (GFE), the Special Information Booklet, the HUD–1/HUD–1A Settlement Statements, the Servicing Disclosure Statement, and, as applicable, the Servicing Transfer Disclosure. Other disclosures may be required under certain circumstances and include: The Initial Escrow Account Statement, the Annual Escrow Account Statement, the Affiliated Business Disclosure, and the Consumer Disclosure for Voluntary Escrow Account Payments. This collection helps to protect consumers in several respects. The Special Information Booklet helps to protect consumers from unnecessarily high settlement costs by providing information about the nature and cost of real estate settlement services. The GFE and HUD–1/HUD–1A Settlement Statements enable consumers to compare estimated settlement costs with actual settlement costs. The Affiliated Business Disclosure helps to protect

borrowers from unnecessarily high settlement service charges due to the settlement service provider's use of an affiliated provider. Disclosures related to the servicing of the mortgage loan help to protect consumers if the servicing of the loan could be or is transferred. Disclosures related to consumers' escrow accounts help to protect them from unnecessarily high escrow charges.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 17,183,000 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether the collection of information is necessary for the proper performance of the CFPB, including whether the information will have practical utility; (b) the accuracy of the above estimate of the burden of the information collection; (c) ways to enhance the quality, usefulness, 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.

Dated: January 12, 2012.

Chris Willey,

Chief Information Officer, Consumer Financial Protection Bureau.

[FR Doc. 2012–988 Filed 1–18–12; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANANCIAL PROTECTION

[Docket No. CFPB–2012–0004]

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (''CFPB'' or the ''Bureau''), gives notice of the establishment of a Privacy Act System of Records.

DATES: Comments must be received no later than February 21, 2012. The new system of records will be effective February 28, 2012, unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0004, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier in Lieu of Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number for this notice. In general all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau; 1700 G Street NW., Washington, DC 20006, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Act''), Public Law 111–203, Title X, established the CFPB to administer and enforce Federal consumer financial protection law. The CFPB will maintain the records covered by this notice.

The new system of records described in this notice ''CFPB.013 –CFPB External Contact Database'' will maintain records concerning the activities and operations of the CFPB's external affairs activities.

The report of the new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000, and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled ''CFPB.013—CFPB External Contact Database'' is published in its entirety below.

Dated: January 13, 2012.

Claire Stapleton,

Chief Privacy Officer.

CFPB.013

SYSTEM NAME:

CFPB External Contact Database.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington DC, 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include all individuals involved in CFPB communications with external affairs related activities, (1) Media representatives (including, without limitations, newspaper, magazine, radio or television station, wire service, or any other form of media) who request interviews or meetings with the CFPB staff; (2) individuals who accompany the CFPB staff on official travel; (3) individuals who request building passes for access to the CFPB facility (including, without limitations, media representatives, correspondents, technicians, and/or producers); (4) individuals who request information from the CFPB Communications Office concerning specific issues and/or topics; (5) individuals who have been contacted for media events, interviews or meetings, occasions, invitations, travel opportunities or the placement of articles; (6) individuals on the mailing list for the CFPB speeches or updates; (7) individuals who request the CFPB accept a speaking engagement, accept an honor, attend a function, or request information about the CFPB, and its mission and/or policies, etc.; (8) individuals who have participated in a survey or focus group sponsored by the CFPB; (9) CFPB contacts of nongovernmental organizations throughout the United States (media, external affairs, educational, etc.); (10) officials of Federal, state and local governments; (11) present and past CFPB staff (assignment history); (12) CFPB staff authorized to perform domestic speaking/media engagements; and (13) CFPB staff involved external affairs related communications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system will include information related to communications with external affairs contacts. Such records include: (1) Contact information (name, business phone number, email address) for individuals who are involved in the operation of the CFPB's external affairs activities; (2) domestic travel records, including dates, places

visited and purpose of trip, biographies, speaking engagements, and interviews; (3) communications between CFPB staff and individuals representing the media, non-profits, academia, and the private sector; (4) information necessary to obtain entry into CFPB facility; such as, name, address, telephone number, date of birth, Social Security numbers, state of citizenship; (5) press releases; (6) names of local media organizations, non-profit, academia, and private sector organizations; (7) information on CFPB staff who ask the CFPB for permission to publish information about themselves or articles they have authored; (8) information on individuals who have participated in either a survey or focus group sponsored by the CFPB; (9) invitations sent to the CFPB to participate in or attend a speaking engagement, including the names of requesters and/or the organizations they represent, phone numbers, email addresses, assigned action officials and status; (10); automated and hard copy travel records, usually contain names, titles, addresses, organizations, telephone/fax/internet numbers, when necessary for travel documents;

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–203, Title X, sections 1011, 1012, 1021, codified at 12 U.S.C. 5491, 5492, 5511.

PURPOSE(S):

The purpose of the system is to enable the CFPB to communicate with the American public about its mission and activities. The information will be used to facilitate the CFPB's activities, including external contacts with the media, non-profits, academia, and the private sector. The information collected will also facilitate CFPB events and press conferences.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB's rules relating to Disclosure of Records and Information. Rules are promulgated at 12 CFR part 1070 *et seq* to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another Federal or state agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) To the Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body before which the CFPB is authorized to appear, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the litigation, and such proceeding names as a party or interests:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(8) A grand jury pursuant either to a Federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(9) Appropriate agencies, entities, and persons, to the extent necessary to secure information relevant to the CFPB's external affairs activities, including external contacts with the media, non-profits, academia, and the private sector; and

(10) Members of the media, Federal, state, and local government officials or other recipients of the CFPB's external affairs communications to inform them about attendees and invited guests of the CFPB media events and press briefings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Records are retrievable by the name of the individual or organization, date of received inquiry or request, or assigned file number, email address or by some combination thereof.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

The CFPB will maintain electronic and paper records indefinitely until the National Archives and Records Administration (NARA) approves the CFPB's records disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Consumer Financial Protection Bureau, Media Relations Officer, 1500 Pennsylvania Ave. NW. (Attn: 1801 L Street NW.), Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in Title 12, Chapter 10 of the CFR, ''Disclosure of Records and Information.'' Address such requests to: Chief Privacy Officer, Bureau of

Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained directly from the individual who is the subject of these records, and/or the agency or organization that the individual represents; and the CFPB staff involved in the external affairs operations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–989 Filed 1–18–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: High Seas Fishing Vessel Permit Application, Logbook Reporting, and Vessel Marking.

OMB Control Number: 0648–0304.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 120.

Average Hours per Response: Permits, 30 minutes; logbooks, 5 minutes; vessel marking, 45 minutes.

Burden Hours: 848.

Needs and Uses: This request is for extension of a current information collection. United States (U.S.) vessels that fish on the high seas (waters beyond the U.S. exclusive economic zone) are required to possess a permit issued under the High Seas Fishing Compliance Act (HSFCA). Applicants for this permit must submit information to identify their vessels, owners and operators of the vessels, and intended fishing areas. The application information is used to process permits and to maintain a register of vessels authorized to fish on the high seas.

The HSFCA also requires vessels be marked for identification and enforcement purposes. Vessels must be marked in three locations (port and starboard sides of the deckhouse or hull, and on a weatherdeck) with their official number or radio call sign.

Operators of vessels licensed under the HSFCA are also required to report their catch and fishing effort when fishing on the high seas. The requirement is for fishery management purposes and to provide data to international organizations. Vessels already maintaining logbooks under other specific regulations are not required to maintain an additional logbook.

These requirements apply to all vessels fishing on the high seas.

Affected Public: Business or other for-profit organiations.

Frequency: Annually, daily and every five years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: January 12, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–911 Filed 1–18–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Vessel Identification Requirements.

OMB Control Number: 0648–0355.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 1,663.

Average Hours per Response: 15 minutes.

Burden Hours: 1,247.

Needs and Uses: The success of fisheries management programs depends significantly on regulatory compliance. The vessel identification requirement is essential to facilitate enforcement. The ability to link fishing or other activity to the vessel owner or operator is crucial to enforcement of regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. A vessel's official number is required to be displayed on the port and starboard sides of the deckhouse or hull, and on a weather deck. It identifies each vessel and should be visible at distances at sea and in the air. Vessels that qualify for particular fisheries are readily identified, gear violations are more readily prosecuted, and this allows for more cost-effective enforcement. Cooperating fishermen also use the number to report suspicious activities that they observe. Regulation-compliant fishermen ultimately benefit as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: January 12, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–912 Filed 1–18–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Socio-Economic Assessment of Snapper Grouper Fisheries in the U.S. Caribbean.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 250.

Average Hours per Response: 1 hour.

Burden Hours: 250.

Needs and Uses: This request is for a new information collection.

The National Marine Fisheries Service (NMFS) proposes to collect demographic, cultural, economic, and social information about the snapper-grouper fisheries in the United States (U.S.) Caribbean. The proposed survey also intends to inquire about industry's perceptions, attitudes and beliefs regarding the potential use of catch shares to manage these fisheries. The data gathered will be used to describe the current socio-economic condition of the fishery and offer insight into fishermen's concerns about a potential catch share program, which could be used to better tailor a potential program. In addition, the information collected will be used to strengthen and improve fishery management decision-making, satisfy legal mandates under Executive Order 12866, the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1881 *et seq.*), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act, and other pertinent statutes.

Affected Public: Business or other for-profit organizations.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0366, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: January 12, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–913 Filed 1–18–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

[Docket No. 110906558–1551–01]

Privacy Act of 1974; System of Records

AGENCY: Office of Inspector General (OIG), Department of Commerce (DOC).

ACTION: Notice of Proposed Amendment to Privacy Act System of Records, ''Investigative and Inspection Records—COMMERCE/DEPT–12.''

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (11), and Office of Management and Budget (OMB) Circular A–130, Appendix I, ''Federal Agency Responsibility for Maintaining Records about Individuals,'' DOC OIG proposes to amend the system of records entitled ''Investigative and Inspection Records—COMMERCE/DEPT–12,'' to include the new automated Inspector General Complaint Intake Reporting and Tracking System (''IG–CIRTS''); change the system name to ''OIG Investigative Records''; update OIG routine uses; update OIG's practices for electronically storing, retrieving, and safeguarding records in the System, and generally update the systems notice. The new system will enhance efficiency in the complaint intake and case tracking processes, reduce burdens of paper storage, and update protections in access and storage of information within the records system. Accordingly, ''Investigative and Inspection Records—COMMERCE/DEPT—12,'' published in the **Federal Register**, 50 FR 9102–9105 (Mar. 6, 1985), is amended and restated as shown below. DOC OIG invites public comment on the amended system announced in this publication.

DATES: *Comment Date:* To be considered, written comments on the proposed amended system must be submitted on or before February 21, 2012.

Effective Date: Unless comments are received, the amended system of records will become effective, as proposed, on the date a subsequent notice is published in the **Federal Register**.

ADDRESSES: Please address comments to Counsel to the Inspector General, Room 7892, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; by email to *IGCounsel@oig.doc.gov;* or by facsimile to (202) 501–7335. For further information, general questions, and privacy-related issues, please contact the Counsel to the Inspector General at (202) 482–5992.

SUPPLEMENTARY INFORMATION: The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, authorizes DOC OIG to conduct investigations to detect and prevent fraud, waste, mismanagement and abuse, and to promote economy and efficiency, in the DOC's programs and operations. OIG uses records in this system in the course of investigating individuals and entities suspected of criminal, civil, or administrative misconduct, and in supporting related judicial and administrative proceedings. OIG's Office of Investigations (OI) maintains and manages OIG's investigative records. The updates to the system will not involve the collection of additional categories of information, but will provide methods for data tracking and retrieval previously unavailable. The new system will enhance efficiency in the complaint intake and case tracking processes, reduce burdens of paper storage, and update protections in access and storage of information within the records system.

SYSTEM NAME:

COMMERCE/DEPT–12, OIG Investigative Records.

SECURITY CLASSIFICATION:

Sensitive but Unclassified (SBU).

SYSTEM LOCATION:

U.S. Department of Commerce, Office of Inspector General, 14th Street and Constitution Avenue NW., Washington, DC 20230; U.S. Department of Commerce, Office of Inspector General, Regional Offices, and investigative site(s) used in the course of OIG investigation(s).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In connection with its investigative duties, DOC OIG maintains records in its records system on the following categories of individuals insofar as they are relevant to any investigation or preliminary inquiry undertaken to determine whether to commence an investigation: subjects of investigations; complainants; witnesses; confidential and non-confidential informants; contractors; subcontractors; recipients of Federal funds and their contractors/subcontractors and employees; individuals interacting with DOC employees or management; current, former, and prospective DOC

employees; alleged violators of DOC rules and regulations; union officials; individuals who are investigated and/or interviewed; persons suspected of violations of administrative, civil, and/or criminal provisions; grantees; subgrantees; lessees; licensees; persons engaged in official business with the DOC; or other persons identified by the OIG or by other agencies, constituent units of the DOC, and members of the general public in connection with the authorized functions of the OIG. The names of individuals and related information may be received by referral or through inquiries initiated at the discretion of the Inspector General in the conduct of assigned duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains investigative reports and materials gathered or created with regard to investigations of administrative, civil, and criminal matters by DOC OIG and other Federal, State, local, tribal, territorial, non-governmental, international, foreign regulatory, or foreign law enforcement agencies or entities. Categories of records may include: complaints; requests to investigate; information contained in criminal, civil, or administrative referrals; statements from subjects and/or witnesses; affidavits, transcripts, police reports, photographs, and/or documents relative to a subject's prior criminal record; medical records; accident reports; materials and intelligence information from other governmental investigatory or law enforcement organizations; information relative to the status of a particular complaint or investigation, including any determination relative to criminal prosecution, civil, or administrative action; general case management documentation; subpoenas and evidence obtained in response to subpoenas; evidence logs; pen registers; correspondence; records of investigation; and other data and evidence collected or generated by OIG's Office of Investigations while conducting its official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, 5 U.S.C. App. 3, as amended.

PURPOSE:

The records contained in this system are used by DOC OIG to carry out its statutory responsibilities under the Inspector General Act of 1978, 5 U.S.C. App. 3, as amended, to conduct and supervise investigations, prevent and detect fraud, waste, and abuse, and promote economy, efficiency, and effectiveness in DOC programs and operations. The records are used in the course of investigating individuals and entities suspected of criminal, civil, or administrative misconduct and in supporting related judicial and administrative proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed, as a routine use, to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current license, if necessary to obtain information relevant to a DOC decision concerning the assignment, hiring, or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

5. A record in this system of records may be disclosed, as a routine use, to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

6. A record in this system may be transferred, as a routine use, to the Office of Personnel Management for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his or her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose and any other relevant (i.e. GSA or DOC) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the appropriate agency or entity, whether Federal, State, local, tribal, territorial, foreign, or international, charged with the responsibility for investigating or prosecuting a violation of any law, rule, regulation or order. Routine use for law enforcement purposes also includes disclosure to individuals or to agencies, whether Federal, State, local, foreign, or international, when necessary to further the ends of an investigation.

9. A record from this system of records may be disclosed, as a routine use, to representatives of the Department of Justice (DOJ) or of any other agency that is responsible for representing DOC interests in connection with judicial, administrative or other proceedings. This includes circumstances in which (1) The DOC or OIG, or any component thereof; (2) any employee of the DOC or OIG in his or her official capacity; (3) any employee of the DOC or OIG in his or her individual capacity, where DOJ has agreed to represent or is considering a request to represent the employee; or (4) the United States or any of its components, is a party to pending or potential litigation or has an interest in such litigation; in which the DOC or OIG is likely to be affected by the litigation, or in which the DOC or OIG determines that the use of such records by the DOJ is relevant and necessary to the litigation; provided, however, that in each case, the DOC or OIG determines that disclosure of records to the DOJ or representative is a use of the information that is compatible with the purpose for which the records were collected. Records may also be disclosed to representatives of DOJ and other U.S. Government entities, to the extent necessary, to obtain their advice on any matter relevant to an OIG investigation.

10. A record from this system of records may be disclosed, as a routine use, to any source from which additional information is requested in order to obtain information relevant to: a decision by either the DOC or OIG concerning the hiring, assignment, or retention of an individual or other personnel action; the issuance, renewal, retention, or revocation of a security clearance; the execution of a security or

suitability investigation; the letting of a contract; or the issuance, retention, or revocation of a license, grant, award, contract, or other benefit to the extent the information is relevant and necessary to a decision by the DOC or OIG on the matter.

11. A record from this system of records may be disclosed, as a routine use, to a Federal, State, local, tribal, territorial, foreign, international, or other public authority in response to its request in connection with: the hiring, assignment, or retention of an individual; the issuance, renewal, retention, or revocation of a security clearance; the reporting of an investigation of an individual; the execution of a security or suitability investigation; the letting of a contract; or the issuance, retention, or revocation of a license, grant, award, contract, or other benefit conferred by that entity to the extent that the information is relevant and necessary to the requesting entity's decision on the matter.

12. A record in this system of records may be disclosed, as a routine use, in the event that a record, either by itself or in combination with other information, indicates a violation or a potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto; or a violation or potential violation of a contract provision. In these circumstances, the relevant records in the system may be referred, as a routine use, to the appropriate agency or entity, whether Federal, State, local, tribal, territorial, foreign, or international charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, order, or contract.

13. A record in this system of records may be disclosed, as a routine use, to any source from which additional information is requested, either private or governmental, to the extent necessary to solicit information relevant to any investigation, audit, or evaluation.

14. A record in this system of records may be disclosed, as a routine use, to a foreign government or international organization pursuant to an international treaty, convention, implementing legislation, or executive agreement entered into by the United States.

15. A record in this system of records may be disclosed, as a routine use, to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the DOC or OIG, who have a need to access the information in the performance of their duties or activities. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

16. A record in this system of records may be disclosed, as a routine use, to representatives of the Office of Personnel Management, the Office of Special Counsel, the Merit Systems Protection Board, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, the Office of Government Ethics, and other Federal agencies in connection with their efforts to carry out their responsibilities to conduct examinations, investigations, and/or settlement efforts, in connection with administrative grievances, complaints, claims, or appeals filed by an employee, and such other functions promulgated in 5 U.S.C. 1205–06.

17. A record in this system of records may be disclosed, as a routine use, to a grand jury agent pursuant to a Federal or State grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

18. A record in this system of records may be disclosed, as a routine use, to the Departments of the Treasury and Justice in circumstances in which OIG seeks to obtain, or has in fact obtained, an ex parte court order to obtain tax return information from the Internal Revenue Service.

19. A record in this system of records may be disclosed, as a routine use, to any Federal official charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in investigative operations for purposes of reporting to the President and Congress on the activities of OIG. This disclosure category includes other Federal Offices of Inspectors General and members of the Council of Inspectors General on Integrity and Efficiency, and officials and administrative staff within their investigative chain of command, as well as authorized officials of DOJ and its component, the Federal Bureau of Investigation.

20. A record in this system of records may be disclosed, as a routine use, to appropriate agencies, entities, and persons when (1) It is suspected or determined that the security or confidentiality of information in the system of records has been compromised; (2) it is determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identify theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by OIG, DOC, or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

21. A record in this system of records may be disclosed, as a routine use, to the public or to the media for release to the public, following consultation with the DOC Chief Privacy Officer, when the matter under investigation has become public knowledge or the Inspector General determines that such disclosure is necessary to preserve confidence in the integrity of the Inspector General audit, inspection, review, or investigative process, or is necessary to demonstrate the accountability of DOC employees, officers or individuals covered by the system, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

22. A record in this system of records may be disclosed, as a routine use, to Congress, congressional committees, or the staffs thereof, in order to fulfill the Inspector General's responsibility, as mandated by the Inspector General Act of 1978, to keep the Congress, in connection with its oversight and legislative functions concerning the administration of programs and operations administered or financed by DOC, fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies concerning the administration of programs and operations administered or financed by DOC.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and other media (photographs, audio recording, diskettes, CDs, etc.) are stored in GSA-approved security containers with combination locks in a secured area. Electronic records are maintained on two servers, a data server which maintains the IG–CIRTS database, and a file server which maintains case files

and related materials. Both servers are maintained in a secured, restricted-area facility.

RETRIEVABILITY:

Paper records are retrieved by alphabetical indices cross referenced to file numbers. Electronic records are retrieved via 'Secure Socket Layer' (SSL) encryption search mechanisms. Electronic searches may be performed by search criteria that include case numbers, names of individuals or organizations, and other key word search variations.

SAFEGUARDS:

Paper records are kept in locked cabinets, secured rooms, in a guarded building, and used only by authorized screened personnel. Electronic records are stored on two servers maintained in a locked facility that is secured at all times by security systems and video cameras. Data in the system are encrypted and password protected. Access to electronic records is restricted to DOC OIG staff individually authorized to access the IG–CIRTS application. Passwords are changed every 90 days. Backup tapes are stored in a locked and controlled room in a secure off-site facility.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the DOC OIG Records Retention Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER NAME AND ADDRESS:

Deputy Assistant Inspector General for Investigations, Room 7898c, Office of Inspector General, United States Department of Commerce, 1401 Constitution Ave., NW., Washington, DC 20230.

NOTIFICATION PROCEDURE:

The Inspector General has exempted this system from the procedures of the Privacy Act relating to individuals' requests for notification of the existence of records on themselves.

RECORD ACCESS PROCEDURE:

The Inspector General has exempted this system from the access procedures of the Privacy Act.

CONTESTING RECORDS PROCEDURE:

The Inspector General has exempted this system from the contest procedures of the Privacy Act.

RECORD SOURCE CATEGORIES:

DOC OIG collects information from a wide variety of sources, including information from the DOC and other Federal, State, and local agencies, subjects, witnesses, complainants, victims, confidential and non-confidential sources, individuals, and non-governmental entities.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

Under 5 U.S.C. 552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the agency or component that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. The Inspector General Act of 1978, 5 U.S.C. App. 3, as amended, mandates the Inspector General to recommend policies for, and to conduct, supervise and coordinate activities in the Department and between the Department and other Federal, State and local government agencies with respect to all matters relating to the prevention and detection of fraud in programs and operations administered or financed by the Department, and to the identification and prosecution of participants in such fraud. Under the Act, whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law, the Inspector General must report the matter expeditiously to the Attorney General. In addition to these principal functions pertaining to the enforcement of criminal laws, the Inspector General may receive and investigate complaints on information from various sources concerning the possible existence of activities constituting violations of law, rules or regulations, or mismanagement, gross waste of funds, abuses of authority or substantial and specific danger to the public health and safety. The provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(j)(2) are as follows: 5 U.S.C. 552a(c)(3) and (4); 5 U.S.C. 552a(d); 5 U.S.C. 552a(e)(1), (2) and (3); 5 U.S.C. 552a(e)(4)(G), (H), and (I); 5 U.S.C. 552a(e)(5) and (8); 5 U.S.C. 552a(f); 5 U.S.C. 552a(g).

To the extent that the exemption under 5 U.S.C. 552a(j)(2) is held to be invalid, then the exemptions under 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5) are claimed for all material which meets the criteria of these three subsections.

Provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5) are as follows: 5 U.S.C. 552a(c)(3); 5 U.S.C. 552a(d); 5 U.S.C. 552a(e)(1); 5 U.S.C. 552a(e)(4)(G), (H), and (I); 5 U.S.C. 552a(f).

Reasons for exemptions: In general, the exemption of this information and material is necessary in order to accomplish the law enforcement function of the Office of Inspector General, to prevent disclosure of classified information as required by Executive Order, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel. Detailed reasons follow:

Reasons for exemptions under 5 U.S.C. 552a(j)(2) and (k)(2):

(1) 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(c)(4), (d), (e)(4)(G) and (H), (f) and (g) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating to access to records and the contest of information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in records systems. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or to grant access to an investigative file could interfere with investigative and enforcement proceedings, deprive co-defendants of a right to a fair trial or other impartial adjudication, constitute an unwarranted invasion of personal privacy of others, disclose the identity or confidential sources, reveal confidential information supplied by these sources and disclose

investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations, and to identify, detect, and apprehend violators.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of a criminal or other investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his or her jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which related to matters incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privilege under Federal programs. The application of the provision would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct for the following reasons:

a. In certain instances the subject of an investigation cannot be required to supply information to investigators. In those instances, information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct, etc., must be obtained from other sources.

b. Most information collected about an individual under investigation is obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his or her activities.

c. The subject of an investigation will be alerted to the existence of an investigation if any attempt is made to obtain information from subject. This could afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

d. In any investigation, it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(6) 5 U.S.C. 552a(e)(3) requires that an agency must inform the subject of an investigation who is asked to supply information of:

a. The authority under which the information is sought and whether disclosure of the information is mandatory or voluntary,

b. The purposes for which the information is intended to be used,

c. The routine uses which may be made of the information, and

d. The effects on the subject, if any, of not providing the requested information. The reasons for exempting this system of records from the foregoing provision are as follows:

(i) The disclosure to the subject of the investigation as stated in (b) above would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(ii) If the subject were informed of the information required by this provision, it could seriously interfere with undercover activities requiring disclosure of undercover agents' identity and impairing their safety, as well as impairing the successful conclusion of the investigation.

(iii) Individuals may be contacted during preliminary information-gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(7) 5 U.S.C. 552a(e)(5) requires that records be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about an individual. Because the law defines ''maintain'' to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation it is not possible to determine this prior to collection of the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material which may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(8) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record of such individual is made available to any persons; under compulsory legal process when such process becomes a matter of public record. The notice requirements of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

Reasons for exemptions under 5 U.S.C. 552a(k)(1):

(1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the record at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation, and that such persons are subjects of that investigation, information which if known might cause damage to national security.

(2) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records, and the contest of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of

records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigations undertaken in connection with national security; or could disclose the identity of sources kept secret to protect national security or reveal confidential information supplied by these sources.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose the identity of sources kept secret to protect national security.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of an investigation involving national security matters.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violators of laws other than those within the scope of his or her jurisdiction. In the interests of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining forms of evidence during an investigation, information may be supplied to the investigator which relate to matters incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

Reasons for exemptions under 5 U.S.C. 552a(k)(5):

(1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subject with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records and the contest of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; co-defendants of a right to a fair trial; constitute an unwarranted invasion of personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by these sources; and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations, and to make fair and objective decisions on questions of suitability for Federal employment and related issues.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of an investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after that information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his or her jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relate to matters incidental to the main purpose of the investigation but which may relate to matters under investigative jurisdiction of another agency. Such information cannot readily be segregated.

Dated: December 16, 2011.

Jonathan R. Cantor,

Chief Privacy Officer, Department of Commerce.

[FR Doc. 2012–898 Filed 1–18–12; 8:45 am]

BILLING CODE 3510–55–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Annual Services Report

AGENCY: U.S. Census Bureau, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before March 19, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection instrument(s) and instructions should be directed to Ron Farrar, U.S. Census Bureau, 8K145, Washington, DC 20233–6500, (301) 763–6782 or Bill Samples, U.S. Census Bureau, 8K045, Washington, DC 20233–6500, (301) 763–7175.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Services Report (ASR), previously named Service Annual Survey (SAS), produces annual nationwide estimates of revenue and expenses for service industries. These service industries include all or portions of the following North American Industry Classification System (NAICS) sectors: Utilities (NAICS 22); Transportation and Warehousing (NAICS 48 and 49); Information (NAICS 51); Finance and Insurance (NAICS 52); Real Estate and Rental and Leasing (NAICS 53); Professional, Scientific and Technical Services (NAICS 54); Administrative and Support and Waste Management and Remediation Services (NAICS 56); Educational Services (NAICS 61); Health Care and Social Assistance (NAICS 62); Arts, Entertainment, and Recreation (NAICS 71); and Other Services (NAICS 81).

For selected industries in Utilities; Transportation; Finance; Information; Professional, Scientific and Technical Services; Administrative Support and Waste Management and Remediation Services; and Educational Services, ASR produces estimates of revenue by detailed North American Product Classification System (NAPCS) products. Inventory estimates for selected industries in the Transportation and Information sectors are produced, as well as estimates of expanded revenues for selected industries across multiple sectors. For industries with a significant non-profit component, separate estimates are developed for taxable firms and organizations exempt from federal income tax.

These data are needed to provide a sound statistical basis for the formation of policy by various governmental agencies. The Census Bureau is authorized by Title 13, United States Code, to conduct surveys necessary to furnish current data on subjects covered by the major censuses. These surveys provide continuing and timely national statistical data for the period between economic censuses.

The Bureau of Economic Analysis, the primary Federal user of these annual program statistics, uses the information in developing the national income and product accounts, compiling benchmark and annual input-output tables, and computing Gross Domestic Product by industry. The Bureau of Labor Statistics uses the data as inputs to its Producer Price Indexes and in developing productivity measurements. The Centers for Medicare and Medicaid Services use the data in the development of the National Health Expenditure Accounts. The Federal Communications Commission uses the data as a means for assessing FCC policy. The Coalition of Service Industries uses the data for general research and planning. Trade and professional organizations uses the data to analyze industry trends and benchmark their own statistical programs, develop forecasts, and evaluate regulatory requirements. The media uses the data for news reports and background information. Private businesses use the data to measure market share; analyze business potential; and plan investment decisions. The Census Bureau uses the data to provide new insight into changing structural and cost conditions that will impact the planning and design of future economic census questionnaires. Private industry also uses the data as a tool for marketing analysis.

Data are collected from all of the largest firms and from a sample of small- and medium-sized businesses selected using a stratified sampling procedure. The samples are reselected periodically, generally at 5-year intervals. The largest firms continue to be canvassed when the sample is re-drawn, while nearly all of the small- and medium-sized firms from the prior sample are replaced. We collect these data by using a mail-out/mail-back and online survey questionnaire.

II. Method of Collection

We collect this information by mail, Internet, fax, and telephone follow-up.

III. Data

OMB Control Number: 0607–0422.

Form Numbers: The Annual Services Report program consists of 154 unique forms, which are too extensive to list here.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, Government hospitals and Federal Government.

Estimated Number of Respondents: 83,648.

Estimated Time per Response: 3 to 6 hours depending on form.

Estimated Total Annual Burden Hours: 286,186.

Estimated Total Annual Cost: $8,488,277.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 182, 224, and 225.

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: January 13, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–937 Filed 1–18–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 04–2012]

Foreign-Trade Zone 230—Piedmont Triad Area, NC; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Piedmont Triad Partnership, grantee of FTZ 230, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part

400). It was formally filed on January 11, 2012.

FTZ 230 was approved by the Board on March 11, 1998 (Board Order 956, 63 FR 13836–13837, 3/23/98) and expanded on June 21, 2007 (Board Order 1514, 72 FR 35968, 07/02/07).

The current zone project includes the following sites: *Site 1* (164 acres)—within the 206-acre Lexington Business Center, Hargrave Road and Business Interstate 5, Lexington (Davidson County); *Site 2* (2,793 acres total, 3 parcels)—at Piedmont Triad International Airport area (Parcel 1, 2,722 acres), adjacent to U.S. 68 and U.S. 421, Greensboro (Guilford County); Bull Ridge Lot 1 (Parcel 2, 55 acres), Pleasant Ridge Road, Greensboro (Guilford County); and, 311 F and 311 G Chimney Rock Road (Parcel 3, 16 acres), Greensboro (Guilford County); *Site 3* (157 acres total, 2 parcels)—within the East High Point I–85/I–74 Industrial Corridor in High Point (Guilford County) as follows: Elon Place and Kivett Drive (Parcel 1, 47 acres); and, Kivett Drive Industrial Park (Parcel 2, 110 acres), Kivett Drive and I–85; *Site 4* (40 acres)—Salem Business Park, Interstate 40, U.S. Highway 52 and U.S. Highway 311, Winston-Salem (Forsyth County); *Site 5* (125 acres)—Westwood Industrial Park, adjacent to U.S. Highway 52, Mt. Airy (Surry County); *Site 6* (373 acres)—Piedmont Triad West, McKinney Road, Mt. Airy (Surry County); *Site 7* (131 acres, sunset 6/30/12)—SouthPoint Business Park, 125 Quality Drive, Mocksville (Davie County); *Site 8* (9 acres total, 2 parcels, sunset 6/30/12)—TST Logistics warehouse facilities, 533 North Park Avenue (Site 8A—7 acres) and 673 Gilmer Street (Site 8B—2 acres), Burlington (Alamance County); *Site 9* (107 acres, sunset 6/30/12)—within the 112-acre Piedmont Corporate Park, located on National Service Road which runs parallel to Interstate 40, High Point (Guilford County); *Site 10* (149 acres, sunset 6/30/12)—within the 163-acre Premier Center located at NC Highway 68 and Premier Drive, High Point (Guilford County); *Site 11* (115 acres total, 4 parcels, sunset 6/30/12)—within the 1,100-acre Piedmont Centre Park in High Point as follows: Eagle Hill Business Park (Parcel A, 32 acres) located at 4183, 4189, 4193 and 4197 Eagle Hill Drive; Federal Ridge Business Park (Parcel B, 39 acres) at 4300, 4328, 4336, 4344, 4380 and 4388 Federal Drive; Green Point Business Park (Parcel C, 23 acres) located at 4500, 4501, 4523 and 4524 Green Point Drive; and, Lowell's Run (Parcel D, 21 acres) located at 4487 Premier Drive; *Site 12* (4 acres, sunset 6/30/12)—TST Logistics warehouse facility, 1941 Haw River Hopedale Road, Haw River (Alamance County); *Site 13* (2 acres, sunset 6/30/12)—TST Logistics warehouse facility, 821 West Center Street, Mebane (Alamance County); *Site 14* (18 acres, expires 3/31/13)—Old Dominion Freight Line, Inc. warehouse facility, 100 Don Truell Lane, Thomasville (Davidson County); and *Site 15* (36 acres)—Union Cross Business Park, 140 and 390 Business Park Drive, Winston-Salem (Forsyth County).

The grantee's proposed service area under the ASF would be Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Montgomery, Randolph, Rockingham, Stokes, Surry and Yadkin Counties, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within/adjacent to the Winston-Salem Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project under the ASF as follows: To renumber parcel 2 of Site 2 as Site 16; to renumber parcel 3 of Site 2 as Site 17; to renumber parcel 2 of Site 3 as Site 18; to renumber parcel 2 of Site 8 as Site 19; to renumber parcel A of Site 11 as Site 20; to renumber parcel C of Site 11 as Site 21; and to renumber parcel D of Site 11 as Site 22. Sites 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 16, 17, 18, 20, 21 and 22 would become magnet sites, and Sites 8, 12, 13, 14, 15 and 19 would become usage-driven sites.

The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that modified magnet Site 2 would be so exempted. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 230's authorized subzones.

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

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 19, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 3, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: January 11, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–979 Filed 1–18–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T–1–2012]

Foreign-Trade Zone 267—Fargo, ND; Application for Temporary/Interim Manufacturing Authority, CNH America, LLC (Agricultural and Construction Equipment Manufacturing); Fargo, ND

An application has been submitted to the Executive Secretary of the Foreign-Trade Zones Board (the Board) by the Fargo Municipal Airport Authority, grantee of FTZ 267, requesting temporary/interim manufacturing (T/IM) authority within Site 2 of FTZ 267 at two CNH America, LLC (CNH) facilities, located in Fargo, North Dakota. The application was filed on January 12, 2012.

The CNH facilities (761 employees, capacity—up to 7,200 agricultural tractors and 4,000 construction wheel loaders/year) were approved by the Board in 2009 for the manufacture of agricultural tractors (HTSUS 8701.90) and construction wheel loaders (HTSUS 8429.51) (Board Order 1639, 74 FR 41373, 8/17/2009). Under T/IM procedures, CNH has requested additional authority to produce certain related subassemblies and parts of tractors, combines, and wheel loaders. The additional activity would involve the manufacture of the following equipment (approx. 1,000 units of each/year): Cabs for agricultural tractors and other special-purpose vehicles (HTSUS 8707.90, duty rate range—free to 4%); track-laying tractors for agriculture and construction (HTSUS 8701.30, duty-free); cabs and steps for construction equipment (HTSUS 8431.49, duty-free); combine parts and subassemblies, including undercarriages and track kits

(HTSUS 8433.90, duty free); tractor parts and subassemblies, including front fenders (HTSUS 8708.29, duty rate range—free to 2.5%); radiators and radiator parts (HTSUS 8708.91, duty free); and, undercarriages, front and rear frames, battery doors, hydraulic tanks, draw bars and connecting links (HTSUS 8708.99, duty free). Foreign components that would be used in production (representing some 30% to 40% of the value of the finished products) include: Rubber hoses (HTSUS 4009.21, 4009.22, 4009.31); rubber transmission belts (HTSUS 4010.33); rubber floor mats (HTSUS 4016.91); cork friction rings (HTSUS 4504.90); cardboard boxes and sheets (HTSUS 4819.10); manuals (HTSUS 4901.99); instruction sheets (HTSUS 4911.10); iron and steel hardware, including pin stops (HTSUS 7301.61), fittings (HTSUS 7307.92, 7307.99), and washers/locks/clips (HTSUS 7318.21, HTSUS 7318.24); copper wire and cable (HTSUS 7413.00); metal latches and locks (HTSUS 8301.20); metal sign plates (HTSUS 8310.00); fans (HTSUS 8414.59); valves (HTSUS 8413.81, 8481.30); electric heating apparatus (HTSUS 8516.29); audio speakers and parts (HTSUS 8518.90); speed sensors (HTSUS 8526.10), switches (HTSUS 8536.50); terminals and couplings (HTSUS 8536.90); insulated wire/harness assemblies (HTSUS 8544.30); bumpers (HTSUS 8708.10); cab suspension system components (HTSUS 8708.80); and, heater controls (HTSUS 9032.89). Duty rates range from duty free to 8.5 percent. T/IM authority could be granted for a period of up to two years.

FTZ procedures could exempt CNH from customs duty payments on the foreign components used in export production. The company anticipates that 30 to 45 percent of the facilities' shipments will be exported. On its domestic sales, CNH would be able to choose the duty rates during customs entry procedures that apply to the finished subassemblies and parts (duty rate range, duty-free to 4%) for the foreign inputs noted above.

In accordance with the Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations pursuant to Board Orders 1347 and 1480.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for their receipt is February 21, 2012.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: January 12, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–980 Filed 1–18–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–943]

Oil Country Tubular Goods From the People's Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review

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

DATES: *Effective Date:* January 19, 2012.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Eve Wang, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4474 or (202) 482–6231, respectively.

SUPPLEMENTARY INFORMATION

Background

On June 28, 2011, the Department of Commerce (''the Department'') published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on oil country tubular goods from the People's Republic of China covering 53 companies for the period November 17, 2009, through April 30, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 37781 (June 28, 2011). The POR was corrected to May 19, 2010 through April 30, 2011 in *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011) at footnote four. The preliminary results of review are currently due no later than January 31, 2012.

Extension of Time Limit of Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. We determine that completion of the preliminary results of this review within the 245-day period is not practicable because the Department requires additional time to analyze information pertaining to the respondents' sales practices, factors of production, and to issue supplemental questionnaires and review the responses. Therefore, we require additional time to complete these preliminary results. As a result, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review by 90 days until April 30, 2012.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 6, 2012.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–981 Filed 1–18–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

National Advisory Council on Minority Business Enterprise: Meeting of the National Advisory Council on Minority Business Enterprise

AGENCY: Minority Business Development Agency, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council for Minority Business Enterprise (NACMBE) will hold its fifth meeting to discuss the work of the three subcommittees and deliverables to

fulfill the NACMBE's charter mandate. The agenda may change to accommodate Council business.

DATES: The meeting will be held on Monday, February 6, 2012 from 11 a.m. to 7 p.m. Eastern Time (ET).

ADDRESSES: This meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Demetria Gallagher, National Director's Office, Minority Business Development Agency (MBDA), U.S. Department of Commerce at (202) 482–1624, *email: dgallagher@mbda.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the NACMBE pursuant to his discretionary authority and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2) on April 28, 2010. The NACMBE is to provide the Secretary of Commerce with recommendations from the private sector on a broad range of policy issues that affect minority businesses and their ability to access successfully the domestic and global marketplace.

Topics to be considered: During the meeting the three subcommittees will report on their work and the Council will discuss and deliberate on possible recommendations. The Subcommittee topics include: (1) Definition of Minority Business Enterprises (MBEs) and MBDA's role, (2) Creation of an MBE Forum, and (3) Strategic Alliances & Exports.

Public Participation: The meeting is open to the public. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Demetria Gallagher at the contact information above by 5 p.m. EST on Monday, January 30, 2012, to preregister. Please specify any requests for reasonable accommodation at least ten (10) business days in advance of the meeting. Last minute requests will be accepted, but may not be possible to fulfill.

A limited amount of time, in the afternoon, will be available for pertinent brief oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning affairs of the NACMBE at *www.mbda.gov/main/nacmbe-submit-comments.* To be considered during the meeting, comments must be received no later than 5 p.m. ET on Wednesday, February 1, 2012, to ensure transmission to the Council prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Demetria Gallagher, at (202) 482–1624, or *dgallagher@ mbda.gov,* at least ten (10) days before the meeting date.

Copies of the NACMBE open meeting minutes will be available to the public upon request.

Dated: January 12, 2012.

David A. Hinson,

National Director, Minority Business Development Agency.

[FR Doc. 2012–1005 Filed 1–18–12; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA916

Takes of Marine Mammals Incidental to Specified Activities; Pile Placement for ORPC Maine's Cobscook Bay Tidal Energy Pilot Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from Ocean Renewable Power Company Maine, LLC (ORPC) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to pile driving in Cobscook Bay, Maine. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing to issue an IHA to incidentally harass, by Level B harassment, four species of marine mammals during the specified activity within a specific geographic region and is requesting comments on its proposal.

DATES: Comments and information must be received no later than February 21, 2012.

ADDRESSES: Comments on the application and this proposal should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Magliocca@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can

apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) further established a 45-day time limit for NMFS' review of an application, followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On November 2, 2011, NMFS received an application from ORPC requesting an IHA for the take, by Level B harassment, of small numbers of harbor seal (*Phoca vitulina*), gray seal (*Halichoerus grypus*), harbor porpoise (*Phocoena phocoena*), and Atlantic white-sided dolphin (*Lagenorhynchus acutus*) incidental to pile driving activities in Cobscook Bay, Maine. Upon receipt of additional information and a revised application, NMFS determined the application complete and adequate on January 7, 2011.

ORPC plans to build, deploy, monitor, and test a single-device tidal turbine as the first phase of a long-term project with the ultimate goal of generating and delivering electricity to an on-shore location in Lubec, Maine and connecting to the Bangor Hydro Electric Company power grid. The long-term project would be carried out in two separate phases over an expected 8-year pilot license term. Because elevated sound levels from pile driving during the first phase of the project have the potential to result in marine mammal harassment, NMFS is proposing to issue an IHA for take incidental to pile driving activities.

Description of the Specified Activity

ORPC proposes to install foundational piles to support an underwater tidal turbine unit. The turbine unit is approximately 98 feet (ft) long, 17 ft high, and 17 ft wide and is attached to a bottom support frame, which holds the unit in place about 15 ft above the sea floor. The turbine unit weighs about 69,000 pounds (lbs) and is coupled with the bottom support frame to comprise what is called a single-device TidGen™ Power System. At the interface with the seabed, the bottom support frame requires a site-specific design based on the environmental conditions at the deployment area. The foundation design for the single-device TidGen™ Power System is a pile bent arrangement consisting of ten steel pipe piles. Each foundation pile would have a 30-inch (in) diameter and a half-inch wall thickness and would rest on bedrock. Piles would vary in length from 15–18 m (50–60 ft) due to bottom sediment depth, but each pile would be driven to the top of bedrock and would protrude 3–5 m (10–15 ft) above the seafloor.

A total of 11 piles (10 for the foundation and one for mounting environmental monitoring equipment) would be driven from a moored barge for the first phase. Piles would be placed about six m (20 ft) apart in two rows of five and the rows would be separated by about 15 m (50 ft). Geotechnical data shows that the TidGen™ device would be located in an area with up to 40 ft of marine clay and some thin layers of glacial till overlaying bedrock. Based on this data and extensive soil studies in the area, piles are expected to sink fairly deep into the mud line under their own weight. Piles would be driven the remaining depth using vibratory and impact pile driving procedures from barge-based pile driving equipment. A pile for mounting environmental monitoring equipment would also be installed with the same pile driving equipment. The monitoring pile would be two m (six ft) in diameter, or an array of three piles not greater than 30 in in diameter. The monitoring pile would protrude about six m (20 ft) above the seafloor. The two-m diameter pile would sit about two m below the mud line while the array of smaller diameter piles would be driven to bedrock.

ORPC would use an H&M model H–1700 vibratory hammer to drive piles to the extent possible. If additional energy is required to reach bedrock, a Berminghammer model B–3505 diesel impact hammer would be used, with maximum rated impact energy of 21,533 ft-lb. ORPC expects that the need for an impact hammer would be minimal and for very short durations. To lessen the amount and intensity of sound propagation, ORPC would evaluate the use of wooden sound absorption cushions and/or bubble curtains.

Date and Duration of Proposed Activity

ORPC plans to begin pile driving on March 1, 2012. Pile driving with a vibratory hammer would take up to 3 minutes per pile and pile driving with an impact hammer would take up to 5 minutes per pile. Due to strong currents during ebb and flood tides, pile driving would occur during slack tides only. ORPC expects that only one pile would be driven per slack tide period, for a total of 7–12 days of pile driving during daylight hours only. Pile driving could occur for up to 90 minutes per slack tide, with the potential for two slack tide pile driving sessions per day. NMFS Northeast Regional Office recommends that in-water construction involving pile driving be conducted between November 8 and April 9 to avoid impacts to fisheries resources. However, ORPC may be able to conduct pile driving activities after April 9 if they can demonstrate that noise levels caused by the impact hammer are below NMFS' guidelines. Although pile driving is only expected to last 7–12 days, NMFS would issue the IHA for a 1-year period to allow for permitting and weather delays. Pile driving would only occur in weather that provides adequate visibility for marine mammal monitoring activities.

Region of Proposed Activity

The proposed activity would occur in Cobscook Bay, in between Lubec and Eastport, Maine. Piles and other deployment materials would be transported by barge from a staging area at the Eastport Boat School or other local access point. Cobscook Bay has extremely strong tidal currents and notably high tides, creating an extensive intertidal habitat for marine and coastal species. Water depth at the proposed project location is 26 m (85 ft) at mean lower low water. The Bay is considered a relatively intact marine system, as the area has not experienced much industrialization.

Sound Propagation

Sound is a mechanical disturbance consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's loudness and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. For example, 10 dB yields a sound level 10 times more intense than 1 dB, while a 20 dB level equates to 100 times more intense, and a 30 dB level is 1,000 times more intense. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference

pressures are ''re: 20 μPa'' and ''re: 1 μPa,'' respectively. Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1975). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

Source levels for the vibratory and impact hammer are expected to be 175 dB and 190 dB, respectively. Assuming a practical spreading loss of 15 log R, OPRC estimates that the 180-dB (Level A) isopleth for the impact hammer could be as far as 100 m (328 ft). Based on similar estimates, the 160-dB (Level B) isopleth for the impact hammer could be about 1,800 m (5,906 ft) The 120-dB (Level B for continuous sound sources) isopleth for the vibratory hammer could be as far as 4,600 m (2.5 mi).

Description of Marine Mammals in the Area of the Specified Activity

Marine mammals with known presence in this region of Cobscook Bay are the harbor seal, grey seal, harbor porpoise, and Atlantic white-sided dolphin. ORPC has been conducting incidental visual observations of marine mammals in Cobscook Bay since 2007, for a total effort of 252 4-hr observational periods over 222 days. During this time, marine mammal observers have recorded 57 seals, 47 harbor porpoises, and two Atlantic white-sided dolphins (Table 2). No observations of any whale species have been made in Cobscook Bay by ORPC since monitoring began in 2007. In addition, a review of available databases does not indicate any recorded whale sightings in Cobscook Bay. Other species that may possibly occur in the vicinity of the proposed activity include North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaengliae*), fin whale (*Balaenoptera borealis*), minke whale (*Balaenoptera acutorostrata*), and sei whale (*Balaenoptera borealis*). However, these five species are not likely to occur in Cobscook Bay and are generally associated with open ocean habitats and offshore locations. NMFS has concluded that the specified activity will not impact these five species and they are not discussed further.

Month	Hours of effort	Harbor and grey seal	Harbor porpoise	Atlantic white-sided dolphin
January	16	0	0	0
February	36	0	1	0
March	56	1	0	0
April	160	4	3	0
May	56	1	3	0
June	84	8	1	0
July	84	4	10	0
August	120	16	24	2
September	100	9	5	0
October	96	8	0	0
November	72	4	0	0
December	104	2	0	0
Total	1,008	57	47	2

Harbor Seals

Harbor seals are typically found in temperate coastal habitats and use rocks, reefs, beaches, and drifting glacial ice as haul outs and pupping sites. On the east coast, they range from the Canadian Arctic to southern New England, New York, and occasionally the Carolinas. There are an estimated 91,000 harbor seals in the western North Atlantic stock and the population is increasing. Harbor seals are not listed under the Endangered Species Act (ESA) nor considered depleted under the MMPA. More information, including stock assessment reports, can be found at: *http://www.nmfs.noaa.gov/pr/species/mammals/pinnipeds/harborseal.htm*. The only species-specific data for Cobscook Bay is from ORPC's 2007–2010 marine mammal observations.

Gray Seals

Gray seals reside in coastal waters and also inhabit islands, sandbars, ice shelves, and icebergs. The western North Atlantic stock ranges from eastern Canada to the northeastern United States. Current population numbers for the western North Atlantic stocks are unknown, but are estimated at over 250,000 animals. Most recent population estimates show increases in abundance in Canada and the United States, although the population in the Gulf of St. Lawrence appears to be declining. Gray seals pup at two established colonies off the coast of Maine: Green Island and Seal Island. Both colonies are tens of miles away from the proposed project site. Gray seals are not listed under the ESA nor considered depleted under the MMPA. More information, including stock assessment reports, can be found at *http://ww.nmfs.noaa.gov/pr/sepcies/mammals/pinnipeds/grayseal.htm*. The only species-specific data for Cobscook Bay is from ORPC's 2007–2010 marine mammal observations.

Pinnipeds produce a wide range of social signals, most occurring at relatively low frequencies (Southall *et al.,* 2007), suggesting that hearing is keenest at these frequencies. Pinnipeds communicate acoustically both on land and underwater, but have different hearing capabilities dependent upon the medium (air or water). Based on numerous studies, as summarized in Southall *et al.* (2007), pinnipeds are more sensitive to a broader range of sound frequencies underwater than in air. Underwater, pinnipeds can hear frequencies from 75 Hz to 75 kHz. In air, pinnipeds can hear frequencies from 75 Hz to 30 kHz (Southall *et al.,* 2007).

Harbor Porpoises

Harbor porpoises reside in northern temperate and subarctic coastal and offshore waters. They are commonly found in bays, estuaries, harbors, and fjords less than 200 m (650 ft) deep. In the western North Atlantic, harbor porpoises range from west Greenland to

Cape Hatteras, North Carolina. Harbor porpoises in United States waters are divided into 10 stocks, based on genetics, movement patterns, and management. Any harbor porpoises encountered during the proposed project would be part of the Gulf of Maine-Bay of Fundy stock, which has an estimated abundance of 89,054 animals. Population trends for all U.S. stocks of harbor porpoises are currently unknown. Gulf of Maine-Bay of Fundy harbor porpoises are not listed under the ESA nor considered depleted under the MMPA. More information, including stock assessment reports, can be found at: *http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/harborporpoise.htm*. The only species-specific data for Cobscook Bay is from ORPC's 2007–2010 marine mammal observations.

Cetaceans are divided into three functional hearing groups: low-frequency, mid-frequency, and high-frequency. Harbor porpoises are considered high-frequency cetaceans and the estimated auditory bandwidth (lower to upper frequency hearing cut-off) for this group ranges from 200 Hz to 180 kHz.

Atlantic White-Sided Dolphins

Atlantic white-sided dolphins are only found in temperate waters of the North Atlantic Ocean and typically reside along the continental shelf and slope. They range from Greenland to North Carolina and exhibit seasonal movements between inshore northern waters and southern offshore waters. The western North Atlantic stock has an estimated 63,000 animals, but there is insufficient information to determine population trends. Atlantic white-sided dolphins are not listed under the ESA nor considered depleted under the MMPA. More information, including stock assessment reports, can be found at: *http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/whitesidedolphin_atlantic.htm*. The only species-specific data for Cobscook Bay is from ORPC's 2007–2010 marine mammal observations.

Atlantic white-sided dolphins, like harbor porpoises, are considered mid-frequency cetaceans and their estimated auditory bandwidth ranges from 150 Hz to 160 kHz.

Potential Effects on Marine Mammals

Elevated in-water sound levels from pile driving in the proposed project area may temporarily impact marine mammal behavior. Elevated in-air sound levels are not a concern because the nearest significant pinniped haul-out is more than six nautical miles (NM) away. Marine mammals are continually exposed to many sources of sound. For example, lightning, rain, sub-sea earthquakes, and animals are natural sound sources throughout the marine environment. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to, (1) social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance or received levels will depend on the sound source, ambient noise, and the sensitivity of the receptor (Richardson *et al.,* 1995). Marine mammal reactions to sound may depend on sound frequency, ambient sound, what the animal is doing, and the animal's distance from the sound source (Southall *et al.,* 2007).

Hearing Impairment

Marine mammals may experience temporary or permanent hearing impairment when exposed to loud sounds. Hearing impairment is classified either as temporary threshold shift (TTS) or permanent threshold shift (PTS). There are no empirical data for at what received level PTS occurs in marine mammals; therefore, it must be estimated from at what received levels the onset of TTS occurs and the rate of TTS growth with increasing exposure levels. PTS is likely if the animal's hearing threshold is reduced by ≥ 40 dB of TTS. PTS is considered auditory injury (Southall *et al.,* 2007) and occurs in a specific frequency range and amount. Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007). Due to proposed mitigation measures and source levels in the proposed project area, NMFS does not expect marine mammals to be exposed to received sound levels associated with PTS.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be louder in order to be heard. TTS can last from minutes or hours to days, but is recoverable. TTS also occurs in specific frequency ranges; therefore, an animal might experience a temporary loss of hearing sensitivity only between the frequencies of 1 and 10 kHz, for example. The amount of change in hearing sensitivity is also variable and could be reduced by 6 dB or 30 dB, for example. Recent literature highlights the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts (Mooney *et al.,* 2009a, 2009b; Kastak *et al.,* 2007). Generally, with sound exposures of equal energy, quieter sounds (lower SPL) of longer duration were found to induce TTS onset more than louder sounds (higher SPL) of shorter duration (more similar to subbottom profilers). For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the sound ends. Southall *et al.* (2007) considers a 6 dB TTS (*i.e.,* baseline thresholds are elevated by 6 dB) to be a sufficient definition of TTS-onset. NMFS considers TTS Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B harassment may occur. Southall *et al.* (2007) summarizes underwater pinniped data from Kastak *et al.* (2005), indicating that a tested harbor seal showed a TTS of around 6 dB when exposed to a nonpulse noise at sound pressure level 152 dB re: 1 μPa for 25 minutes. Some studies suggest that harbor porpoises may be more sensitive to sound than other odontocetes (Lucket *et al.,* 2009; Kastelein *et al.,* 2011). However, while TTS onset may occur in harbor porpoises at lower received levels (when compared to other odontocetes), NMFS' 160-dB threshold criteria are based on the onset of behavioral harassment, not the onset of TTS. There is no information on TTS for Atlantic white-sided dolphins or gray seals specifically; published data on the onset of TTS are limited to the captive bottlenose dolphin and beluga (Finneran *et al.,* 2000, 2002b, 2005a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004).

Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. An animal's perception of and response to (in both nature and magnitude) an acoustic event can be influenced by prior experience, perceived proximity, bearing of the sound, familiarity of the sound, *etc.* (Southall *et al.,* 2007). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone

the stock or populations. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). In order to estimate the number of takes by Level B harassment, as defined by the MMPA, it is common practice to estimate how many mammals would be present within a particular distance of activities and/or exposed to a particular level of sound. Additional analyses that include a consideration of the context of the exposures and other factors are then employed to determine what subset of the takes would likely affect a marine mammal in some biologically-important manner.

Non-Pulse Sounds

The studies that address responses of mid-frequency cetaceans (such as Atlantic white-sided dolphins) to non-pulse sounds (like vibratory pile driving) include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to chirps) including: Pingers, drilling playbacks, ship and ice-breaking noise, vessel noise, acoustic harassment devices (AHDs), acoustic deterrent devices (ADDs), mid-frequency active sonar, and non-pulse bands and tones. Southall *et al.* (2007) conclude that the results of these studies do not clearly indicate at what received levels marine mammals are likely to be disturbed by these types of sources. In some cases animals in the field showed significant responses to received levels between 90 and 120 dB, while in other cases these responses were not seen in the 120 to 150 dB range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals typically responded at lower levels in the field).

The studies that address responses of high-frequency cetaceans (such as the harbor porpoise) to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to chirps), including: Pingers, AHDs, and various laboratory non-pulse sounds. All of these data were collected from harbor porpoises. Southall *et al.* (2007) concluded that the existing data indicate that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (around 90 to 120 dB), at least for initial exposures. All recorded exposures above 140 dB induced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.,* 2007). Rapid habituation was noted in some but not all studies.

There are limited data available on the behavioral effects of non-pulse noise on pinnipeds while underwater; however, field and captive studies to date collectively suggest that pinnipeds do not react strongly to exposures between 90 and 140 dB re: 1 μPa; no data exist from exposures at higher levels. Jacobs and Terhune (2002) observed wild harbor seal reactions to high-frequency acoustic harassment devices around nine sites. Seals came within 44 m of the active acoustic harassment devices and failed to demonstrate any behavioral response when received SPLs were estimated at 120–130 dB. In a captive study (Kastelein, 2006), scientists subjected a group of seals to non-pulse sounds between 8 and 16 kHz. Exposures between 80 and 107 dB did not induce strong behavioral responses; however, a single observation from 100 to 110 dB indicated an avoidance response. The seals returned to baseline conditions shortly following exposure. Southall *et al.* (2007) notes contextual differences between these two studies; the captive animals were not reinforced with food for remaining in the noise fields, whereas free-ranging animals may have been more tolerant of exposures because of motivation to return to a safe location or approach enclosures holding prey items.

Impulse Sounds

Southall *et al.* (2007) also addressed behavioral responses of marine mammals to impulse sounds (like impact pile driving). The studies that address the responses of mid-frequency cetaceans to impulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to boomers), including: Small explosives, airgun arrays, pulse sequences, and natural and artificial pulses. The data show no clear indication of increasing probability and severity of response with increasing received level. Behavioral responses seem to vary depending on species and stimuli. Data on behavioral responses of high-frequency cetaceans to multiple pulses is not available. Although individual elements of some non-pulse sources (such as pingers) could be considered pulses, it is believed that some mammalian auditory systems perceive them as non-pulse sounds (Southall *et al.,* 2007).

The studies that address the responses of pinnipeds in water to impulse sounds include data gathered in the field and related to several different sources, including: Small explosives, impact pile driving, and airgun arrays. Quantitative data on reactions of pinnipeds to impulse sounds is limited, but a general finding is that exposures in the 150 to 180 dB range generally have limited potential to induce avoidance behavior (Southall *et al.,* 2007).

No impacts to marine mammal reproduction are anticipated because there are no known pinniped rookeries within the proposed project area and Cobscook Bay is not a known breeding ground for cetaceans. NMFS expects any impacts to marine mammal behavior to be temporary, Level B harassment (for example, avoidance or alteration of behavior). ORPC conservatively assumes 12 pile driving days may occur over the validity of the IHA. Marine mammal injury or mortality is not likely, as the 180 dB isopleth (NMFS' Level A harassment threshold for cetaceans) for the impact hammer is expected to be no more than a 100-m (328 ft) radius. ORPC proposes to continuously monitor a 152-m (500-ft) area around the sound source and cease all pile driving if a marine mammal is observed nearing or within this 152-m (500-ft) isopleth.

Anticipated Effects on Habitat

No permanent detrimental impacts to marine mammal habitat are expected to result from the proposed project. Disturbance in the water column would be limited to the area of each pile. Turbidity resulting from pile driving activity would be limited because pile driving would only occur at slack tide and the seafloor geology in the proposed action area is predominantly gravel and cobbles. Pile driving (resulting in temporary ensonification) may impact prey species and marine mammals by causing avoidance or abandonment of the area; however these impacts are expected to be local and temporary. The benthic impact of the foundation for this phase of the proposed project would be about 113 ft^2 during pile placement, including disturbance from pile driving equipment. While the foundation frame will take up a limited amount of space on the seafloor, there are no expected adverse impacts to marine mammal habitat.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating

grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

ORPC proposed the following mitigation measures to minimize adverse impacts to marine mammals:

Sound Attenuation Device

When using a diesel impact hammer to ''proof'' piles, ORPC would use wooden sound absorption cushions and/or a bubble curtain to reduce hydroacoustic sound levels and avoid the potential for marine mammal injury. Based on previous studies, sound attenuation devices are expected to reduce sound levels by at least 5 dB.

Exclusion Zone

The purpose of the proposed exclusion zone is to prevent Level A harassment (injury) of any marine mammal species. During all in-water impact pile driving, ORPC would establish a preliminary marine mammal exclusion zone around each pile to avoid exposure to sounds at or above 180 dB. The preliminary exclusion zone would have a radius of 152 m (500 ft). This encompasses the initial estimate of the 180 dB isopleth, where injury could occur, plus a 52-m (171-ft) buffer zone. The buffer zone would be established to account for the initial lack of in-water acoustic measurements. Once hydroacoustic monitoring is conducted, the exclusion zone may be adjusted upward accordingly to ensure that marine mammals are not exposed to Level A harassment sound pressure levels. The exclusion zone would be monitored continuously during impact pile driving to ensure that no marine mammals enter the area. Protected species observers (PSOs) would be stationed on two observer boats, one 152 m (500 ft) upstream and one 500 ft downstream of the installation site. One observer on each vessel would survey the exclusion zone, while the second observer would conduct behavioral monitoring outwards to a distance of 1 nm. Several floats anchored at 152 m (500 ft) and 305 m (1,000 ft) would be located around the installation site to help identify when marine mammals are entering or within the exclusion zone. An exclusion zone for vibratory pile driving or installation of concrete piles is unnecessary as source levels would not exceed the Level A harassment threshold.

Pile Driving Shut Down and Delay Procedures

If a PSO sees a marine mammal within or approaching the exclusion zone prior to start of impact pile driving, the observer would notify the on-site project lead (or other authorized individual) who would then be required to delay pile driving until the marine mammal has moved 305 m (1,000 ft) from the sound source or if the animal has not been resighted within 30 minutes. If a marine mammal is sighted within or on a path toward the 152-m (500-ft) exclusion zone during pile driving, pile driving would cease until that animal has moved 305 m (1,000 ft) and is on a path away from the exclusion zone or 30 minutes has lapsed since the last sighting.

Soft-Start Procedures

A ''soft-start'' technique would be used at the beginning of each pile installation to allow any marine mammal that may be in the immediate area to leave before the pile hammer reaches full energy. For vibratory pile driving, the soft-start procedure requires contractors to initiate noise from the vibratory hammer for 15 seconds at 40–60 percent reduced energy followed by a 1-minute waiting period. The procedure would be repeated two additional times before full energy may be achieved. For impact hammering, contractors would be required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. Soft-start procedures would be conducted any time hammering ceases for more than 30 minutes.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Hydroacoustic monitoring would be performed at the initial installation of each pile driving method to ensure that the harassment isopleths are not extending past the calculated distances described in this notice and to assess the efficiency of the sound attenuation devices. ORPC would designate two biologically trained, on-site PSOs, approved in advance by NMFS, to monitor the exclusion zone (preliminarily set at 152 m [500 ft]) for marine mammals 30 minutes before, during, and 30 minutes after all impact pile driving activities and call for shut down if any marine mammal is observed within or approaching the exclusion zone. These PSOs would be positioned on two vessels, one anchored upstream and one anchored downstream at 152 m (500 ft) on the edge of the exclusion zone. One observer on each vessel would survey inwards toward the pile driving site and the second observer would conduct behavioral monitoring outwards to a distance of 1 nm during all impact pile driving. In addition, PSOs would be stationed at the Level B harassment isopleth 4,600 m (2.5 mi) during at least three events of vibratory pile driving to conduct behavioral monitoring. Additional PSOs would be stationed at the Level B harassment isopleth (preliminarily set at 4,600 m [2.5 mi]) on at least three days of vibratory pile driving to validate take estimates and evaluate the behavioral impacts pile driving has on marine mammals out to the Level B harassment isopleth.

Protected species observers would be provided with the equipment necessary to effectively monitor for marine mammals (for example, high-quality binoculars, compass, and range-finder as well as a digital SLR camera with telephoto lens and video capability) in order to determine if animals have entered into the exclusion zone or Level B harassment isopleth and to record species, behaviors, and responses to pile driving. If hydroacoustic monitoring indicates that threshold isopleths are greater than originally calculated, ORPC would contact NMFS within 48 hours and make the necessary adjustments. Likewise, if threshold isopleths are actually less than originally calculated, downward adjustments may be made to the exclusion zone. Protected species observers would be required to submit a report to NMFS within 90 days of completion of pile driving. The report would include data from marine mammal sightings (such as date, time, location, species, group size, and behavior), any observed reactions to construction, distance to operating pile hammer, and construction activities occurring at time of sighting and environmental data for the period (wind speed and direction, Beaufort sea state, cloud cover, and visibility).

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury, or mortality, ORPC would immediately cease the specified activities and immediately report the incident to the Chief of the Permits and

Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401 and/or by email to *Michael.Payne@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator (*Mendy.Garron@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hrs preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hrs preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with ORPC to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ORPC may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that ORPC discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), ORPC would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401, and/or by email to *Michael.Payne@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at (978) 281–9300 (*Mendy.Garron@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with ORPC to determine whether modifications in the activities are appropriate.

In the event that ORPC discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ORPC would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401, and/or by email to *Michael.Payne@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the NMFS Northeast Stranding Hotline (866) 755–6622 and/or by email to the Northeast Regional Stranding Coordinator (*Mendy.Garron@noaa.gov*), within 24 hrs of the discovery. ORPC would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Current NMFS practice regarding exposure of marine mammals to anthropogenic noise is that in order to avoid the potential for injury (PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB or above, respectively. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.,* 2007). Potential for behavioral Level B harassment is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB for impulse sounds (such as impact pile driving) and 120 dB for non-pulse noise (such as vibratory pile driving). These levels are also considered precautionary.

Distances to NMFS' harassment thresholds were calculated based on the expected sound levels at each source and the expected attenuation rate of sound (Table 3). The 152-m (500-ft) distance to the exclusion zone provides protected species observers plenty of time and adequate visibility to prevent marine mammals from entering the area during impact pile driving. This would prevent marine mammals from being exposed to sound levels that reach the Level A harassment threshold.

The estimated number of marine mammals potentially taken is based on ORPC's marine mammal monitoring observations between 2007 and 2010. NMFS is unaware of any other species-specific data for Cobscook Bay. Based on marine mammal sightings during that period, and the estimated number of pile driving days, ORPC requested authorization for the incidental take of four harbor and grey seals and two harbor porpoises. Based on further consultation with NMFS and further evaluation of ORPC's monitoring records between 2007 and 2010, NMFS is proposing to authorize the take of 72 total seals (because they cannot always be identified to the species-level), 72 harbor porpoises, and 12 Atlantic white-sided dolphins. The increase in proposed take is based on the maximum group size of animals observed during ORPC's marine mammal observations (*i.e.,* six seals, five to six harbor porpoises, and one Atlantic white-sided dolphin) multiplied by the maximum expected number of pile driving days (*i.e.,* 12). NMFS recognizes that ORPC's 2007–2010 marine mammal observations may not have accounted for every animal in the area; however, NMFS believes that the above take estimates are extremely conservative considering the short duration of proposed pile driving and indicate the maximum number of animals expected to occur within the largest Level B harassment isopleth 4,600 m (2.5 mi).

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a number of factors which include, but are not limited to, the number of anticipated injuries or mortalities (none of which would be authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur.

As described above, marine mammals would not be exposed to activities or sound levels which would result in injury (PTS), serious injury, or mortality. Pile driving would occur in relatively shallow coastal waters of Cobscook Bay. The proposed project area is not considered significant habitat for marine mammals. The closest regular pinniped haul out is more than six NM away, which is well outside the

project area's largest harassment zone. Pinnipeds may occasionally haul out in areas closer to the proposed project, but not with any regularity. Marine mammals approaching the action area would likely be traveling or opportunistically foraging. The amount of take NMFS proposes to authorize, is considered small (less than one percent) relative to the estimated populations of 91,000 harbor seals, 250,000 gray seals, 89,054 harbor porpoises, and 63,000 Atlantic white-sided dolphins. Marine mammals may be temporarily adversely impacted by pile driving noise. However, some marine mammals are expected to avoid the area when pile driving is occurring, thereby reducing exposure and impacts, and mitigation will further ensure that injury is unlikely to occur (although it would not be expected even in the absence of mitigation given the source levels, density of animals in the area, and short duration of the activities). Pile driving activities are expected to occur for about 7–12 days total (up to 180 minutes per day). There is no anticipated effect on annual rates of recruitment or survival of affected marine mammals. Based on the application and subsequent analysis, the impact of the described pile driving operations may result in, at most, short-term modification of behavior by small numbers of marine mammals within the action area. Marine mammals may avoid the area or temporarily alter their behavior at time of exposure.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily determines that ORPC's proposed pile driving activities will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are anticipated to occur within the action area. Therefore, no effects to listed species are expected and section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS is preparing an Environmental Assessment (EA) to consider the environmental impacts of issuance of a one-year IHA. Upon completion, this EA will be available on the NMFS Web site listed in the beginning of this document (see **ADDRESSES**).

Dated: January 13, 2012.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–991 Filed 1–18–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Performance of Registration Functions by National Futures Association With Respect To Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order.

SUMMARY: The Commodity Futures Trading Commission (Commission) is authorizing the National Futures Association (NFA), effective January 19, 2012, in accordance with the standards established by the Commodity Exchange Act (CEA) and the Commission's regulations issued thereunder, to take the following actions: To process and grant applications for registration and withdrawals of registration with respect to swap dealers (SDs) and major swap participants (MSPs), and to notify of provisional registration; to confirm initial compliance with requirements applicable to SDs and MSPs under CEA Section 4s; to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any SD or MSP or of any applicant for registration in either category; to maintain records regarding SDs and MSPs; and to serve as the official custodian of those Commission records.

DATES: Effective date: January 19, 2012.

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, Christopher W. Cummings, Special Counsel, or Elizabeth Miller, Attorney-Advisor, Division of Swap Dealer and Intermediary Oversight, 1155 21st Street NW., Washington, DC 20581. Telephone Number: (202) 418–6700 and electronic mail: *bgold@cftc.gov, ccummings@cftc.gov,* or *emiller@cftc.gov.*

SUPPLEMENTARY INFORMATION

I. Authority and Background

In a separate document published elsewhere in today's **Federal Register**, the Commission is issuing final regulations regarding the registration process for SDs and MSPs. These final regulations follow the publication of proposed regulations on November 23, 2010,[1] and they implement the registration requirements for SDs and MSPs set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[2] Specifically, Section 731 of the Dodd-Frank Act added Sections 4s(a) and 4s(b) to the CEA [3] to provide for the registration of SDs and MSPs in pertinent part as follows:

(a) REGISTRATION.—

(1) SWAP DEALERS.—It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.

(2) MAJOR SWAP PARTICIPANTS.—It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.

(b) REQUIREMENTS.—

(1) IN GENERAL.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

(2) CONTENTS.—

(A). IN GENERAL.—The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

Pursuant to CEA Sections 4s(a) and 4s(b), then, the Commission is today issuing Regulations 23.21(a) and 23.21(b), which respectively subject each person who meets the definition of an SD or MSP to the registration provisions under the CEA and to Part 3 of the Commission's regulations.[4]

[1] 75 FR 71379.

[2] Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed through the Commission's Web site, *http://www.cftc.gov.*

[3] The CEA and the Commission's regulations issued thereunder similarly may be accessed through the Commission's Web site.

[4] Regulation 23.21(c) makes clear that each affiliate of an insured depository institution described in Dodd-Frank Act Section 716(c) is subject to the registration provisions under the CEA and Part 3 of the regulations as an SD, if the affiliate is an SD, or as an MSP, if the affiliate is an MSP.

The Commission also is issuing today such amendments to Part 3 of its regulations as may be

Additionally, pursuant to CEA Sections 4p, 8a and 17, the Commission is issuing Regulation 170.16, which provides that each registered SD or MSP must become and remain a member of an RFA.

CEA Section 4s further directs the Commission to adopt regulations applicable to SDs and MSPs with respect to the following areas: Capital and margin, reporting and recordkeeping, daily trading records, business conduct standards, documentation standards, duties, chief compliance officer,[5] and, with respect to uncleared swaps, segregation.[6]

CEA Section 8a(10) provides that the Commission may authorize any person—including an RFA—to perform any of the registration functions under the CEA. Further, CEA Section 17(*o*) provides that the Commission may require an RFA to perform registration functions under the CEA with respect to its members.[7] The Commission has previously authorized NFA to perform the full range of registration functions with regard to applicants for and persons registered as: A futures commission merchant, commodity pool operator or commodity trading advisor;[8] an introducing broker;[9] a leverage transaction merchant;[10] a floor broker;[11] a floor trader;[12] or a retail foreign exchange dealer.[13] By today's Order, the Commission is authorizing NFA, in accordance with the standards established by the CEA and the Commission's regulations issued thereunder,[14] to perform the full range of registration functions under the CEA and the Commission's regulations with regard to SDs and MSPs. It is also authorizing NFA to notify an applicant for registration as an SD or an MSP that it is provisionally registered, and to confirm the applicant's initial compliance with such regulations as the Commission may adopt to implement the requirements for SDs and MSPs in CEA Sections 4s(e) through 4s(*l*).

The Commission further notes that it has, by prior Orders, authorized NFA to maintain various Commission registration records, and has certified NFA as the official custodian of such records for the Commission.[15] The Commission has determined, in accordance with its authority under Section 8a(10) of the Act, to authorize NFA to maintain and serve as the official custodian of the Commission's registration records with respect to SDs and MSPs.

In maintaining the Commission's registration records pursuant to this Order, NFA shall remain subject to all other requirements and obligations imposed upon it by the Commission in existing or future Orders or regulations. In this regard, NFA shall also implement such additional procedures and shall modify existing procedures as are necessary to ensure the security and integrity of these records as may be acceptable to the Commission; to facilitate prompt access to these records by the Commission and its staff; to facilitate disclosure of public or nonpublic information in these records when permitted by Commission Orders or regulations; to keep logs as required by the Commission concerning disclosures of nonpublic information; and otherwise to safeguard the confidentiality of the records.

II. Conclusion and Order

The Commission has determined, pursuant to the provisions of CEA Sections 8a(10) and 17(*o*), to authorize NFA, effective January 19, 2012, to perform the following registration functions:

(1) To process and grant applications for registration and withdrawals from registration of swap dealers (SDs) and major swap participants (MSPs), and to notify of provisional registration;

(2) In connection with processing and granting applications for registration of SDs and MSPs, to confirm initial compliance with such regulations as the Commission may adopt to implement CEA Sections 4s(e) through 4s(k) and, where applicable, CEA Section 4s(*l*);

(3) To conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any SD or MSP or of any applicant for registration in either category; and

(4) To maintain records regarding SDs and MSPs, and to serve as the official custodian of those Commission records.

NFA shall perform these functions in accordance with the standards established by the CEA and the Commission's regulations issued thereunder. NFA shall follow the same procedures with respect to recordkeeping, disclosure and tracking of fitness investigations and adverse action proceedings concerning SDs and MSPs as it must follow in cases involving other registrants.

These determinations are based upon the Congressional intent expressed in CEA Sections 4s(a), 4s(b), 8a(10), and 17(*o*). This Order does not, however, authorize NFA to accept or act upon requests for exemption from registration, or to render ''no-action'' or interpretative letters with respect to applicable registration requirements.

Nothing in this Order, or in CEA Section 8a(10) or 17(*o*), shall affect the Commission's authority to review the performance by NFA of Commission registration functions, to adopt and enforce regulations applicable to SDs and MSPs as Commission registrants, and to conduct on-site examinations of the operations and activities of SDs and MSPs as Commission registrants.

Issued in Washington, DC, on January 11, 2012.

David A. Stawick,

Secretary of the Commission.

Appendices to Performance of Registration Functions by National Futures Association With Respect to Swap Dealers and Major Swap Participants—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

[FR Doc. 2012–791 Filed 1–18–12; 8:45 am]

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necessary to accommodate the registration of SDs and MSPs thereunder.

[5] Sections 4s(e) through 4s(k), respectively, added to the CEA by Dodd-Frank Act Section 731.

[6] Section 4s(*l*), added to the CEA by Dodd-Frank Act Section 724(c).

[7] Section 17(*o*)(1) excepts from this authority a member who is a ''registered entity.'' CEA Section 1a(40) defines this term to include, among other persons, a board of trade designated as a contract market under CEA Section 5 and a swap execution facility registered under CEA Section 5h.

Although CEA Section 17 provides that '[a]ny association of persons may be registered with the Commission as a registered futures association,'' to date, NFA is the sole association that has applied for and has been granted registration as a futures association with the Commission.

[8] *See* 49 FR 39593 (Oct. 9, 1984).

[9] *See* 48 FR 35158 (Aug. 3, 1983).

[10] *See* 54 FR 19556 (May 8, 1989).

[11] *See* 51 FR 34490 (Sep. 29, 1986).

[12] *See* 58 FR 19657 (Apr. 15, 1993).

[13] *See* 75 FR 55310 (Sep. 10, 2010).

[14] *See, e.g.,* 49 FR 8208 (Mar. 5, 1984), whereby, among other things, the Commission: Amended Part 3 of its regulations, which concerns registration under the CEA, by adopting a new Subpart C to provide for denial, suspension or revocation of registration; and amended Appendix A to Part 3, to provide for interpretative advice with respect to statutory disqualification under CEA Sections 8a(2)(C) and 8a(2)(E) and Sections 8a(3)(J) and 8a(3)(M).

[15] *See, e.g.,* 49 FR 39593 (Oct. 9, 1984) (regarding the registration records of futures commission merchants, commodity pool operators and commodity trading advisors), and 75 FR 55310 (Sep. 10, 2010) (regarding the registration records of retail foreign exchange dealers).

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, January 25, 2012, 10 a.m.–11.a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public

MATTER TO BE CONSIDERED:

Briefing Matter: Infant Swings—Notice of Proposed Rulemaking.

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: January 17, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–1094 Filed 1–17–12; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), Department of Defense.

ACTION: Federal advisory committee meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine Act of 1976 (5 U.S.C. § 552b, as amended) the Department of Defense announces the following Federal advisory committee meeting of the Threat Reduction Advisory Committee (hereafter referred to as ''the Committee'').

DATES: Tuesday, January 31, 2012, from 12:30 p.m. to 5:30 p.m.; and Wednesday, February 1, 2012, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: Conference Room B–1, The Pentagon Conference Center (January 31) and Conference Room 3A912A, The Pentagon (February 1).

FOR FURTHER INFORMATION CONTACT: Mr. William Hostyn, GS–15, DoD, Defense Threat Reduction Agency/SP–ACP, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Email: *william.hostyn@dtra.mil.* Phone: (703) 767–4453. Fax: (703) 767–4206.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To obtain, review and evaluate classified information related to the Committee's mission to advise on technology security, combating weapons of mass destruction (C–WMD), counter terrorism and counter proliferation.

Agenda: Beginning at 12:30 p.m., January 31, and through the end of the meeting on February 1, the committee will receive SECRET-level Combating Weapons of Mass Destruction (C–WMD) current operations briefings from the Department of Defense and the Intelligence Community. The committee will also hold classified discussions on C–WMD-related national security matters as they formulate their yearly work plan.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR § 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Under Secretary of Defense for Acquisition, Technology and Logistics, in consultation with the DoD FACA Attorney, has determined in writing that this meeting be closed to the public because the discussions fall under the purview of Title 5, United States Code, Section § 552b(c)(1) and are inextricably intertwined with the unclassified material which cannot reasonably be segregated into separate discussions without disclosing secret material.

Committee's Designated Federal Officer or Point of Contact: Mr. William Hostyn, GS–15, DoD, Defense Threat Reduction Agency/SP–ACP, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Email: *william.hostyn@dtra.mil.* Phone: (703) 767–4453. Fax: (703) 767–4206.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Committee at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Committee's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Committee may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all committee members.

Due to changing requirements beyond the control of the Threat Reduction Advisory Committee or its Designated Federal Officer, the Committee was unable to process the amended **Federal Register** notice for the January 31 through February 1, 2012 meeting of the Threat Reduction Advisory Committee as required by 41 CFR 102–3.150(a). Accordingly, the Acting Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: January 13, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–982 Filed 1–18–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0001]

Privacy Act of 1974; System of Records; Correction

AGENCY: U.S. Strategic Command, DoD.

ACTION: Notice to add a system of records; correction.

SUMMARY: On January 13, 2012 (77 FR 2052–2053), DoD published a notice announcing its intent to add a new Privacy Act System of Records. The Categories of Records in the System paragraph was written incorrectly. This notice corrects that error.

FOR FURTHER INFORMATION CONTACT: USSTRATCOM/J060, 901 SAC Blvd., Ste 2A9, Offutt AFB, NE 68113–6000 or call by phone at (402) 294–4461.

SUPPLEMENTARY INFORMATION: On January 13, 2012, DoD published a notice announcing its intent to add a new system in its inventory of Privacy Act System of Records: FSTRATCOM 01, Command Data Records. Subsequent to the publication of that notice, DoD discovered that the Categories of Records in the System paragraph on pages 2052–2053 was written incorrectly.

Correction

In the notice (FR Doc. 2012–573) published on January 13, 2012 (77 FR 2052–2053), make the following

correction. On page 2052, in the third column, replace the Categories of Records in the System paragraph with ''Individuals name, address, status (DoD or Non-DoD), type (military or civilian), service, rank, date of rank, duty title, work address, phone number and email address, food preference/dietary comments, group affiliation (within same database), spouse information, home address (if work address not available), home phone (if work phone not available), home email (if work email not available).''

Dated: January 13, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–1000 Filed 1–18–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before February 21, 2012.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: To *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 13, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: College Assistance Migrant Program (CAMP).

OMB Control Number: 1810–0689.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local, or Tribal Government.

Total Estimated Number of Annual Responses: 37.

Total Estimated Annual Burden Hours: 1,184.

Abstract: For the College Assistance Migrant Program, a customized Annual Performance Report that goes beyond the generic 524B is requested to facilitate the collection of more standardized and comprehensive data tools that provide information for the Government Performance and Results Act, which improves the overall quality of data collection, and increases the quality and quantity of data that may be used to inform policy decisions.

Copies of the information collection submission for OMB review may be accessed from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4747. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2012–973 Filed 1–18–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Equity and Excellence Commission

AGENCY: Office for Civil Rights, Education.

ACTION: Notice of open meeting (Amended).

SUMMARY: On January 5, 2012, the Office for Civil Rights published in the **Federal Register** (FR Doc. 2011–33800 Filed 1–4–12; 8:45 a.m.) a notice of open meeting on January 23, 2012 for the Equity and Excellence Commission. This notice amends the January 5, 2012 notice by providing notice of a closed session from 9 a.m. to 10 a.m. in which the Commissioners will participate in an Ethics briefing prior to the start of the January 23rd meeting

This notice sets forth the revised schedule and proposed agenda of this meeting. The original January 5th notice describes the functions of the Commission. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend. This notice is appearing in the **Federal Register** less than 15 days before the meeting due to a last minute decision to include the Ethics briefing for Commissioners.

DATES: January 23, 2012.

Time: 9 a.m. to 4:30 p.m. Eastern Standard Time.

ADDRESSES: The Commission will meet in Washington, DC at the United States Department of Education at 400 Maryland Avenue SW., Washington, DC 20202, in Barnard Auditorium.

FOR FURTHER INFORMATION CONTACT: Jim Eichner, Designated Federal Official, Equity and Excellence Commission, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Email: *equitycommission@ed.gov.* Telephone: (202) 453–5945.

SUPPLEMENTARY INFORMATION: On January 23, 2012 from 9 a.m. to 4:30 p.m. Eastern Standard Time, the Equity and Excellence Commission will hold a meeting in Washington, DC in the Barnard Auditorium at the U.S. Department of Education's main building at 400 Maryland Avenue SW., Washington, DC 20202.

The purpose of the Commission is to collect information, analyze issues, and

obtain broad public input regarding how the Federal government can increase educational opportunity by improving school funding equity. The Commission will also make recommendations for restructuring school finance systems to achieve equity in the distribution of educational resources and further student performance, especially for the students at the lower end of the achievement gap. The Commission will examine the disparities in meaningful educational opportunities that give rise to the achievement gap, with a focus on systems of finance, and recommend appropriate ways in which Federal policies could address such disparities.

The agenda for the Commission's January 23, 2012 meeting will include an Ethics briefing, discussion of particular language for drafting certain portions of the Commission's annual report, and reaching consensus on particular recommendations. The Commission may have breakout sessions, most likely during the second half of the meeting, to discuss particular issues. The Commission plans to discuss the establishment of two or more subcommittees to discuss recommendations the Commission may make regarding teachers and school leaders; what documents and information should be included in the materials that will supplement the main Commission report; and/or other subjects within the Commission's charter. If time permits, these subcommittees may meet in the afternoon to outline their specific tasks and timing for subsequent meetings. Due to time constraints, there will not be a public comment period, but, individuals wishing to provide comments may contact the Equity Commission via email at *equitycommission@ed.gov.*

Individuals interested in attending the meeting must register in advance because seating may be limited. Please contact Jim Eichner at (202) 453–5945 or by email at *equitycommission@ed.gov.* Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or materials in alternative format) should notify Jim Eichner at (202) 245–5945. The meeting site is accessible to individuals with disabilities.

Records are kept of all Commission proceedings and are available for public inspection at the Department of Education, 400 Maryland Avenue SW., Washington, DC 20202 from the hours of 9 a.m. to 5 p.m. Eastern Standard Time.

Russlynn Ali,

Assistant Secretary, Office for Civil Rights.

[FR Doc. 2012–972 Filed 1–18–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection request with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended 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, 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 respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before March 19, 2012. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Andre de Fontaine, EE–2F/ Forrestal Building, 1000 Independence Avenue SW., 20585 or by fax at (202) 586–5234 or by email at *andre.defontaine@EE.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Andre de Fontaine, EE–2F/ Forrestal Building, 1000 Independence Avenue SW., 20585 or by fax at (202) 586–5234 or by email at *andre.defontaine@EE.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–5141;

(2) *Information Collection Request Title:* Department of Energy Better Buildings, Better Plants Program Information Collection Request;

(3) *Type of Review:* Renewal;

(4) *Purpose:* The information being collected is needed to evaluate the success of the voluntary agreements made through the Department of Energy's (DOE) Better Buildings, Better Plants (BBBP) Program. The BBBP Program is a voluntary initiative, created to support congress's Energy Policy Act of 2005, as amended, section 106, for any company interested in reducing their energy intensity by 25 percent or more in ten years. The program is specifically designed to encourage and recognize United States companies that are in the vanguard of energy efficiency and will lead all industrial facilities by establishing and achieving ambitious energy goals. All companies participating in the program will receive technical support from DOE, and companies achieving the program's energy goals will also receive national recognition for their accomplishments. The information to be collected from Partner plants includes: Background data, including contact information, information on primary energy consumption and energy saving, high level descriptions of implemented energy projects, and annual and cumulative energy intensity progress. The results of the Better Buildings, Better Plants Voluntary Pledge Report will only be published in program evaluation and metrics documentation. Results will be published in aggregate to report the impact of the DOE program in a report that must be submitted to Congress in 2012 and 2017.

(5) *Annual Estimated Number of Respondents:* 175;

(6) *Annual Estimated Number of Total Responses:* 175;

(7) *Annual Estimated Number of Burden Hours:* 2,975;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Statutory Authority: Section 106 of the Energy Policy Act of 2005, as amended, codified at 42 U.S.C. 15811.

Issued in Washington, DC on January 13, 2012.

Leo Christodoulou,

Program Manager, Office of Advanced Manufacturing Program, Office of Energy Efficiency and Renewable Energy, United States Department of Energy.

[FR Doc. 2012–978 Filed 1–18–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection package with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended 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, 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 respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before March 19, 2012. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Melissa Scholz and Kasia Mendelsohn, Office of Nonproliferation and International Security (NA–24), National Nuclear Security Administration, 1000 Independence Ave. SW., Washington, DC 20585 or by fax at (202) 586–1348 or by email at *Melissa.Scholz@nnsa.doe.gov* or *Kasia.Mendelsohn@nnsa.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to the person in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This package contains:

(1) *OMB No.:* 1910–5139;

(2) *Package Title:* U.S. Declaration under the Protocol Additional to the U.S.–IAEA Safeguards Agreement (''Additional Protocol'') and Collection of Information by the Department of Energy;

(3) *Type of Review:* Renewal;

(4) *Purpose:* Obtain information for inclusion by the Department of Energy in the United States Declaration to the International Atomic Energy Agency (IAEA) under Articles 2 and 3 of the Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States, Nov. 18, 1977;

The Department of Energy (DOE) is the Lead Agency for implementing the Additional Protocol at locations owned, operated, or leased by or for DOE, including Nuclear Regulatory Commission (NRC) licensed or certified activities on DOE installations, and, in coordination with the Department of Defense, non-military locations on installations that store or process naval reactor fuel (collectively known as ''DOE Locations''). Only those persons performing activities at DOE Locations that would be declarable to the IAEA under the U.S. AP are affected by this collection of information by DOE.

(5) *Annual Estimated Number of Respondents:* 10–15 respondents.

(6) *Annual Estimated Number of Total Responses:* 10–15 responses per annum.

(7) *Annual Estimated Number of Burden Hours:* 6000. The burden in person hours of responding to the collection of information will depend on the number of declarable activities that take place at the respondent's location. This effort might range from as low as 40 hours for a location with one or two declarable activities, to as many as 400 hours for a location with many (30–40) activities.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* None.

Statutory Authority: Section 211 of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006, Public Law 109–401 (Dec. 18, 2006), codified at 22 U.S.C. 8111.

Issued in Washington, DC, on December 19, 2011.

Kasia Mendelsohn,

Acting Assistant Deputy Administrator, Office of Nonproliferation and International Security (NIS).

[FR Doc. 2012–947 Filed 1–18–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, February 9, 2012; 8:30 a.m.–5 p.m.

Friday, February 10, 2012; 8:30 a.m.–3 p.m.

ADDRESSES: Red Lion Hanford House, 802 George Washington Way, Richland, WA 99356.

FOR FURTHER INFORMATION CONTACT: Paula Call, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA 99352; Phone: (509) 376–2048; or Email: *Paula.Call@rl.doe.gov.*

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Potential Board Advice
  - Waste Treatment Plant Safety Culture
  - 200–PW 1/3/6 and 200–CW–5 Operable Units Record of Decision
  - 100 K Area Draft Proposed Plan
- Discussion Topics
  - Cleanup Budget Priorities
  - Tri-Party Agreement Agency Updates
  - Committee Reports
  - Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paula Call at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Paula Call at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Paula Call's office at

the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/page.cfm/hab.*

Issued at Washington, DC, on January 13, 2012.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2012–946 Filed 1–18–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC)

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open meeting, Webinar.

SUMMARY: This notice announces an open meeting of the Hydrogen and Fuel Cell Technical Advisory Committee (HTAC). The HTAC was established under section 807 of the Energy Policy Act of 2005 (EPACT), Public Law 109–58; 119 Stat. 849. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish notice of an advisory committee meeting in the **Federal Register**. To attend the meeting and/or to make oral statements during the public comment period, please email *HTAC@nrel.gov* at least 5 business days before the meeting. Please indicate if you will attend the webinar meeting, whether you want to make an oral statement, and what organization you represent.

DATES: Thursday, February 9, 2012, 10 a.m.–1 p.m.

ADDRESSES: The meeting will be convened on-line via Webinar conference. Preregistration is required. The public may register through email at *HTAC@nrel.gov,* webinar registration information will be provided.

FOR FURTHER INFORMATION CONTACT: *HTAC@nrel.gov* via email.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice, information, and recommendations to the Secretary on the program authorized by title VIII of EPACT.

Tentative Agenda: (Subject to change; updates will be posted on *http://hydrogen.energy.gov*).

- Public Comment (10 minutes)
- Discussion of HTAC's draft annual report

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the meeting of HTAC and to make oral statements during the specified period for public comment. The public comment period will take place between 10 a.m. and 10:15 a.m. on February 9, 2012. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *HTAC@nrel.gov* at least 5 business days before the meeting. Please indicate if you will be attending the meeting, whether you want to make an oral statement, and what organization you represent (if appropriate). Members of the public will be heard in the order in which they sign up for the public comment period. Oral comments should be limited to two minutes in length. Reasonable provision will be made to include the scheduled oral statements on the agenda. The chair of the committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business. If you would like to file a written statement with the committee, you may do so either by submitting a hard copy at the meeting or by submitting an electronic copy to *HTAC@nrel.gov.*

Minutes: The minutes of the meeting will be available for public review at *http://hydrogen.energy.gov.* or by contacting Jason Marcinkoski at (202) 586–7466 for a copy.

Issued at Washington, DC, on January 13, 2012.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2012–951 Filed 1–18–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, February 8, 2012; 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *noemp@oro.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main meeting presentation will focus on the Fiscal Year 2014 budget request for the DOE Oak Ridge Environmental Management Program.

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC, on January 13, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–948 Filed 1–18–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Petroleum Council

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act and (Pub. L. 92–463),

and in accordance with Title 41, Code of Federal Regulations, Section 102.365(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the National Petroleum Council has been renewed for a two-year period, beginning January 12, 2012. The Council will provide advice and recommendations to the Secretary of Energy on matters relating to oil and natural gas, and the oil and natural gas industries.

Additionally, the renewal of the Council has been determined to be essential to the conduct of the Department's business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law and agreement. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Johnson at (202) 586–6458.

Issued at Washington, DC, on January 12, 2012.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2012–950 Filed 1–18–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–39–000]

D'Lo Gas Storage, LLC; Notice of Application

Take notice that on December 29, 2011, D'Lo Gas Storage, LLC (D'Lo), 1002 East St. Mary Blvd., Lafayette, Louisiana 70503, filed in Docket No. CP12–39–000, an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations, requesting a certificate of public convenience and necessity authorizing D'Lo to construct, operate, and maintain a new natural gas storage project to be located in Simpson County, Mississippi. Additionally, D'Lo requests a blanket certificate under part 284, Subpart G, of the Commission's regulations, to provide open-access non-discriminatory firm interruptible natural gas storage services and hub services, and a blanket certificate authorizing D'Lo to engage in certain self-implementing routine activities under Part 157, Subpart F of the Commission's regulations. D'Lo also requests through this application approval of its pro forma FERC Gas Tariff and authority to charge market-based rates for storage and hub services, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, D'Lo proposes to construct a natural gas storage facility in the D'Lo Salt Dome underground that will provide approximately 24 billion cubic feet of working gas capacity in three caverns. D'Lo will construct five sites for pipeline interconnections and metering with interstate and intrastate gas pipeline systems.

Any questions regarding this application should be directed to J. Gordon Pennington, 2707 N. Kensington St., Arlington, VA 22207, telephone no. (703) 533–7638, facsimile no. (703) 241–1842, and email: *pennington5@verizon.net.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 1, 2012.

Dated: January 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–907 Filed 1–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–40–000]

Questar Pipeline Company; Notice of Application

Take notice that on January 4, 2012, Questar Pipeline Company (Questar), 180 East 100 South, P.O. Box 45360, Salt Lake City, Utah 84145–0360, filed an application in Docket No. CP12–40–000 pursuant to section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization to construct and modify natural gas facilities located on Questar's southern transmission system in Duchesne and Uintah Counties, Utah, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to L. Bradley Burton, General Manager, Federal Regulatory Affairs and Chief Compliance Officer, Questar Pipeline Company, 180 East 100 South, P.O. Box 45360, Salt Lake City, Utah 84145–0360, or by calling (801) 324–2459 (telephone) *brad.burton@questar.com,* or to Tad M. Taylor, Division Counsel, Questar Pipeline Company, 180 East 100 South, P.O. Box 45360, Salt Lake City, Utah 84145–0360, or by calling (801) 324–5531 (telephone) *tad.taylor@questar.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 1, 2012.

Dated: January 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–908 Filed 1–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–795–000]

High Liner Foods Incorporated; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding High Liner Foods Incorporated's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 1, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 12, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–920 Filed 1–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–789–000]

Palmco Power MA, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Palmco Power MA, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 1, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 12, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–922 Filed 1–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–779–000]

Cherokee County Cogeneration Partners, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Cherokee County Cogeneration Partners, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 1, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create

and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 12, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–921 Filed 1–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–775–000]

CPV Cimarron Renewable Energy Company, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of CPV Cimarron Renewable Energy Company, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 1, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 12, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–919 Filed 1–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10198–030]

Pelican Utility District, City of Pelican; Notice of Application for Partial Transfer of License, and Soliciting Comments and Motions To Intervene

On November 30, 2011, Pelican Utility District (transferor) and the City of Pelican (transferee) filed an application to transfer the license for the Pelican Hydroelectric Water Project No. 10198, located on Pelican Creek in the borough of Sitka, Alaska.

Applicants seek Commission approval to transfer the license for the Pelican Hydroelectric Water Project from the transferor to the transferee.

Applicants' Contact: Transferor: Shannon Heim, Dorsey & Whitney, LLP, 50 S. Sixth Street, Minneapolis, MN 55402, (612) 340–8899. Transferee: Mr. Donald W. Edwards, Attorney, Russell Wagg Gabbert & Budzinski, P.C., 510 L Street, Suite 300, Anchorage, AK 99501, (907) 258–1747.

FERC Contact: Patricia W. Gillis (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *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. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–10198) in the docket number field to access the document. For assistance, call toll-free 1–(866) 208–3372.

Dated: January 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–904 Filed 1–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI12–2–000]

Don Grant; Notice of Petition for Declaratory Order and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Petition for Declaratory Order.

b. *Docket No.:* DI12–2–000.

c. *Date Filed:* November 30, 2011.

d. *Applicant:* Don Grant.

e. *Name of Project:* Don Grant Hydroelectric Project.

f. *Location:* The existing Don Grant Hydroelectric Project is located at river mile 19.5 on South Chickamauga Creek, in Graysville, Catoosa County, Georgia.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Don Grant, 6826 Conner Lane, Chattanooga, TN 37421; telephone: (423) 903–2206; Fax: (706) 937–3999; email: *www.dongrantco@aol.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, telephone: (202) 502–8768, or email address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* February 10, 2012.

All documents should be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

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.* Please include the docket number (DI12–2–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The existing run-of-river Don Grant Hydroelectric Project consists of: (1) An existing 158-foot-long, 8-foot-high high-rock-laid dam with a small reservoir; (2) a 11-foot wide by 12.5-foot-long powerhouse, attached to a residence, containing a 37.5 kW Leffel turbine/generator; (3) a tailrace releasing water into South Chickamauga Creek; (4) a 37-foot-long transmission line; and (5) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: January 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–905 Filed 1–18–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9619–3]

Farm, Ranch, and Rural Communities Advisory Committee; Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

The Charter for the Environmental Protection Agency's Farm, Ranch, and Rural Communities Advisory Committee (FRRCC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The purpose of the FRRCC is to provide advice to the Administrator of EPA on environmental issues and policies that are of importance to agriculture and rural communities. It is determined that the FRRCC is in the public interest in connection with the performance of duties imposed on the Agency by law. Inquiries may be directed to Alicia Kaiser, U.S. EPA, (mail code 1101–A), 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone (202) 564–7273, or *kaiser.alicia@epa.gov.*

Dated: January 4, 2012.

Lawrence Elworth,

Agricultural Counselor to the Administrator.

[FR Doc. 2012–974 Filed 1–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9619–2]

National Advisory Council for Environmental Policy and Technology; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a public meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology,

and management issues. NACEPT members represent academia, industry, non-governmental organizations, and local, state, and tribal governments. The purpose of this meeting is to begin developing recommendations to the Administrator regarding actions that EPA can take in response to the National Academy of Sciences Report on ''Incorporating Sustainability in the U.S. Environmental Protection Agency.'' A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ofacmo/nacept/cal-nacept.htm.*

DATES: NACEPT will hold a two-day public meeting on Monday, February 13, 2012, from 9 a.m. to 5:30 p.m. (EST) and Tuesday, February 14, 2012, from 8:30 a.m. to 2 p.m. (EST).

ADDRESSES: The meeting will be held at the EPA Potomac Yard Conference Center, One Potomac Yard, 2777 S. Crystal Dr., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Acting Designated Federal Officer, *joyce.mark@epa.gov,* (202) 564–2130, U.S. EPA, Office of Federal Advisory Committee Management and Outreach (1601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to NACEPT should be sent to Eugene Green at *green.eugene@epa.gov* by Monday, February 6, 2012. The meeting is open to the public, with limited seating available on a first-come, first-served basis. Members of the public wishing to attend should contact Eugene Green at *green.eugene@epa.gov* or (202) 564–2432 by February 6, 2012.

Meeting Access: Information regarding accessibility and/or accommodations for individuals with disabilities, should be directed to Eugene Green at the email address or phone number listed above. To ensure adequate time for processing, please make requests for accommodations at least 10 days prior to the meeting.

Dated: January 4, 2012.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 2012–975 Filed 1–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9612–1]

Proposed Agreement and Covenant Not To Sue for the Colville Post & Poles Superfund Site, Stevens County, WA

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: In accordance with 122(i) of the Comprehensive Environmental Response Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA'') of a proposed ability to pay administrative settlement agreement pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h). This settlement agreement is with Colville Post & Poles, Inc. and Eugene Spring (''Settling Parties'') to recover response costs that EPA incurred conducting a response action at the Colville Post & Poles, Inc. Site, near Colville, Washington. Under the terms of the settlement agreement, the Settling Parties agree to pay EPA $5,000 and all proceeds from the sale of the property at the Site, and to impose restrictions on the use of the property by executing and recording an environmental covenant. In exchange for this consideration, the proposed Agreement contains the United States covenant not to sue, subject to certain reservations set forth in the Agreement, provides protection from third-party law suits for contribution, and will, in accordance with the terms of the settlement agreement, release the Federal lien currently on the property.

DATES: Comments must be submitted by February 20, 2012. EPA and the Department of Justice will consider all comments received and may modify or withdraw the Agreement if comments received or any other information indicates that such action is appropriate.

ADDRESSES: The proposed agreement is available for public inspection at the U.S. Environmental Protection Agency, Region 10 Office, located at 1200 Sixth Avenue, in Seattle, Washington 98101. A copy of the proposed Agreement may be obtained from Carol Kennedy, Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Code ORC–158, Seattle, Washington 98101; (206) 553–0242. Comments should refer to the Colville Post & Poles Superfund Site, Stevens County, Washington, and should be addressed to Jennifer G. MacDonald, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; fax: (206) 553–1762; email: *MacDonald.Jennifer@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer G. MacDonald, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; phone: (206) 553–8311.

Dated: December 16, 2011.

Daniel D. Opalski,

Director, Office of Environmental Cleanup, U.S. Environmental Protection Agency, Region 10.

[FR Doc. 2012–976 Filed 1–18–12; 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: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). 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 estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 21, 2012. 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: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, FCC, at (202) 418–0214.

SUPPLEMENTARY INFORMATION *OMB Control Number:* 3060–0848.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98–147.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,400 respondents; 17,340 responses.

Estimated Time per Response: 3.5461361 hours (average burden per response).

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 47 U.S.C. 201 and 251 of the Communications Act of 1934, as amended.

Total Annual Burden: 61,490 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information. Any respondent that submits information to the Commission that they believe is confidential may request confidential treatment of such information 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) during this 30 day comment period in order to obtain the full three year clearance from them. The Commission is requesting OMB approval for an extension (no change in the reporting, recordkeeping and/or third party disclosure requirements).

There is no change in the Commission's previous burden estimates.

The reporting, recordkeeping and third party disclosure requirements implement sections 201 and 251 of the Communications Act of 1934, as amended, to provide for physical collocation on rates, terms and conditions that are just, reasonable and nondiscriminatory, and to promote deployment of advanced telecommunications services without significantly degrading the performance of other services. All of the requirements will be used by the Commission and competitive local exchange carriers (LECs) to facilitate the deployment of telecommunications services, including advanced telecommunications services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–910 Filed 1–18–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission (FCC, Commission, or Agency).

ACTION: Notice; one new Privacy Act system of records.

SUMMARY: Pursuant to subsection (e)(4) of the Privacy Act of 1974, as amended (''Privacy Act''), 5 U.S.C. 552a, the FCC's Consumer and Governmental Affairs Bureau (CGB) proposes to add a new system of records, FCC/CGB–3, ''National Deaf-Blind Equipment Distribution Program (NDBEDP).'' Following enactment of the *Twenty-First Century Communications and Video Accessibility Act of 2010* (CVAA) on October 8, 2010, the FCC's Consumer and Governmental Affairs Bureau (CGB) subsequently issued a Report and Order, *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Section 105, Relay Services for Deaf-Blind Individuals, on April 6, 2011, which adopted rules to establish a National Deaf-Blind Equipment Distribution Program (NDBEDP) to support the distribution of specialized customer premises equipment (CPE) and the provision of associated services. State equipment distribution programs, other public programs, and private entities may apply to the Commission for certification for the state to participate in the NDBEDP and receive reimbursement for its activities. The Commission's purpose for establishing this system of records is for the FCC's Consumer and Governmental Affairs Bureau (CGB) to use the information, *i.e.,* personally identifiable information (PII), that is submitted by the certified equipment distribution program in each state, as required by the NDBEDP, to maintain each state's certification to participate in this program.

DATES: In accordance with subsections (e)(4) and (e)(11) of the Privacy Act, any interested person may submit written comments concerning this proposed new system of records on or before February 21, 2012. The Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review the system of records and Congress may submit comments on or before February 28, 2012. The proposed new system of records will become effective on February 28, 2012 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act, the FCC is submitting reports on this proposed new system to OMB and Congress.

ADDRESSES: Address comments to Leslie F. Smith, Privacy Analyst, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554, or via the Internet at *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554, (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: As required by the *Privacy Act of 1974,* as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed new system of records to be maintained by the FCC. This notice is a summary of the more detailed information about the proposed new system of records, which may be obtained or viewed pursuant to the contact and location information given above in the **ADDRESSES** section. The Commission's purpose for establishing this system of records is for the FCC's Consumer and Governmental Affairs Bureau (CGB) to use the information, *i.e.,* personally identifiable information (PII), that is submitted by the certified equipment distribution program in each state, as required by the NDBEDP, to

maintain each state's certification to participate in this program.

This notice meets the requirement documenting the change to the systems of records that the FCC maintains, and provides the public, OMB, and Congress with an opportunity to comment.

FCC/CGB–3

SYSTEM NAME:

National Deaf-Blind Equipment Distribution Program (NDBEDP).

SECURITY CLASSIFICATION:

The FCC's Security Operations Center (SOC) has not assigned a security classification to this system of records.

SYSTEM LOCATION:

Consumer and Governmental Affairs Bureau (CGB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554 and 1270 Fairfield Road, Gettysburg, PA 17325.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals in this system include:

1. Individuals who request or receive the NDBEDP equipment;

2. Individuals who attest to the disability of the individual receiving the NDBEDP equipment and/or matters related to the eligibility requirements, qualifications, and regulations, etc., for those seeking to participate in NDBEDP; and

3. Individuals who may file complaints, including but not limited to both formal and informal complaints, and inquiries on behalf of themselves or NDBEDP participants and matters related to NDBEDP rules and regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include:

1. The name and contact information, including street address and email addresses, and phone number for the individuals requesting or receiving the NDBEDP equipment;

2. The name and contact information, including street and email addresses, phone number(s), and fax number(s) for the individuals attesting to the disability of the individual who is deaf-blind;

3. Other miscellaneous PII related to the individuals who participate in this program, *e.g.,* response data for equipment requests, users' complaints, evaluation of the users' needs, user training data, outreach activities, equipment request denial data, and medical attestations or records regarding disability qualifications and eligibility requirements;

4. The name and contact information, including street and email addresses, phone number(s), and fax number(s) for individuals who make or have made formal and informal complaints and inquiries (including related supporting information) in any format (including but not limited to paper, telephone, TTY, recording, Braille, and electronic submissions, such as email, Internet, and fax, *etc.*) on behalf of themselves or NDBEDP participants;

5. Commission correspondence, *e.g.,* letters and related communications regarding formal and informal complaints and inquiries (which may include PII and related information) that pertain to the NDBEDP programs, the NDBEDP individual participants, and the certification and participation of each entity approved by the Commission to participate in the NDBEDP.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. 154, 254(k); Sections 403(b)(2)(B), (c) Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, 254(k), and 620.

PURPOSES:

The Commission's CGB will use the information, *e.g.,* records, in this system, which is submitted by the certified equipment distribution program in each state, as required by the NDBEDP, to maintain each state's certification to participate in this program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. Informal Complaints—When a record in this system involves a formal or informal complaint, and/or inquiry filed against an NDBEDP certified program and related entities, the complaint or inquiry may be forwarded to the subject certified program for that state, the appropriate State and Federal medical boards, certifying associations, and related groups, and personal physicians (who may determine whether an individual meets the eligibility criteria for participation in the NDBEDP) for a response, as required under FCC rules;

2. Medical Records—A medical attestation or record (including but not limited to third party attestations, certifications, and declarations of disability) from this system may be disclosed to appropriate entities, including but not limited to the subject certified program for that state, the appropriate State and Federal medical boards, certifying associations, and related groups, and personal physicians for the purposes of determining whether an individual meets the eligibility criteria of being deaf-blind required to participate in the NDBEDP program;

3. Income Eligibility Records—A record from this system may be disclosed to appropriate entities, including but not limited to the subject certified program for that state, the appropriate State and Federal certifying boards and authorities for the purposes of determining whether an individual meets the income eligibility criteria required to participate in the NDBEDP program;

4. Law Enforcement and Investigation—Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be shared with appropriate Federal, State, or local authorities either for purposes of obtaining additional information relevant to a FCC decision or for referring the record for investigation, enforcement, or prosecution by another agency;

5. Adjudication and Litigation—Where by careful review, the Agency determines that the records are both relevant and necessary to litigation and the use of such records is deemed by the Agency to be for a purpose that is compatible with the purpose for which the Agency collected the records, these records may be used by a court or adjudicative body in a proceeding when: (a) The Agency or any component thereof; or (b) any employee of the Agency in his or her official capacity; or (c) any employee of the Agency in his or her individual capacity where the Agency has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation;

6. Department of Justice—A record from this system of records may be disclosed to the Department of Justice (DOJ) or in a proceeding before a court or adjudicative body when:

(a) The United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) The Commission determines that the disclosure is relevant or necessary to the litigation;

7. Congressional Inquiries—When requested by a Congressional office in response to an inquiry by an individual

made to the Congressional office for the individual's own records;

8. Government-wide Program Management and Oversight—When requested by the General Services Administration (GSA), the National Archives and Records Administration (NARA), and/or the Government Accountability Office (GAO) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906 (such disclosure(s) shall not be used to make a determination about individuals); when the U.S. Department of Justice (DOJ) is contacted in order to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act; or when the Office of Management and Budget (OMB) is contacted in order to obtain that office's advice regarding obligations under the Privacy Act;

9. Breach of Federal Data—A record from this system may be disclosed to appropriate agencies, entities, and persons when (1) The Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; and

10. FCC Enforcement Actions—When a record in this system involves a formal and/or informal complaint or inquiry filed alleging a violation of FCC Rules and Regulations by an applicant, licensee, certified or regulated entity or an unlicensed person or entity, the complaint may be provided to the alleged violator for a response. When an order or other Commission-issued document that includes consideration of a formal or informal complaint or complaints or inquiries is issued by the FCC to implement or to enforce FCC Rules and Regulations, the complainant's name or other PII may be made public in that order or document. Where a complainant in filing his or her complaint explicitly requests confidentiality of his or her name or other PII from public disclosure, the Commission will endeavor to protect such information from public disclosure. Complaints that contain requests for confidentiality may be dismissed if the Commission determines that the request impedes the Commission's ability to investigate and/or resolve the complaint.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in the NDBEDP system includes electronic data, records, and files that are stored in the FCC's computer network databases, and paper documents, records, and files that are stored in file cabinets in the CGB office suite.

RETRIEVABILITY:

Information in the electronic NDBEDP databases can be retrieved by categories of information, including but not limited to the individual's contact information, including the individual's name(s), street address, email address(es), and landline phone and cell phone number(s), complainant(s), and description fields.

The paper documents in the NDBEDP files are assigned a file identification name and/or number for future reference.

SAFEGUARDS:

Access to the information, *e.g.,* electronic records, files, and data, in the NDBEDP, which is housed in the FCC computer network databases, is restricted to authorized CGB supervisors and staff and to the supervisors, staff, and contractors in the FCC's Information Technology Center (ITC), who maintain these computer databases. Other FCC employees and contractors may be granted access on a ''need-to-know'' basis. The FCC's computer network databases are protected by the FCC's security protocols, which include controlled access, passwords, and other security features. Information resident on the database servers is backed-up routinely onto magnetic media. Back-up tapes are stored on-site and at a secured location.

The paper documents are maintained in file cabinets that are located in the CGB office suite, whose access is through a card-coded main door. Access to these files is restricted to authorized CGB supervisors and staff.

RETENTION AND DISPOSAL:

The FCC will retain these records until a records schedule has been approved by the National Archives and Records Administration (NARA).

SYSTEM MANAGERS AND ADDRESS:

Address inquiries to the Consumer and Governmental Affairs Bureau (CGB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the Consumer and Governmental Affairs Bureau (CGB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

RECORD ACCESS PROCEDURES:

Address inquiries to the Consumer and Governmental Affairs Bureau (CGB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

CONTESTING RECORD PROCEDURES:

Address inquiries to the Consumer and Governmental Affairs Bureau (CGB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

RECORD SOURCE CATEGORIES:

The sources for the information in this system include the individuals who request or receive the NDBEDP equipment; individuals, groups, and other entities who attest to the disability of the individual requesting or receiving the equipment; and other individuals, groups, and other entities who have a connection to the NDBEDP and its participants, *e.g.,* those filing formal and informal complaints or inquiries on behalf of the participants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–909 Filed 1–18–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:19 a.m. on Tuesday, January 17, 2012, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider

matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Thomas J. Curry (Appointive), seconded by Ms. Julie L. Williams, acting in the place and stead of Director John G. Walsh (Acting Comptroller of the Currency), concurred in by Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Acting Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: January 17, 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–1108 Filed 1–17–12; 4:15 pm]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, January 24, 2012 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2012–1095 Filed 1–17–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement 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 agreement are available through the Commission's Web site (www.fmc.gov) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012152.

Title: CSAV/Liberty Mexico Space Charter Agreement.

Parties: Compania Sud Americana de Vapores S.A. and Liberty Global Logistics LLC.

Filing Party: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, NY 10016.

Synopsis: The agreement authorizes the parties to cross charter space for the carriage of motorized vehicles from ports in Mexico to ports on the U.S. East Coast.

Dated: January 13, 2012.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–996 Filed 1–18–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (Eastern Time), January 23, 2012.

PLACE: 4th Floor Conference Room, 1250 H Street NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts will be closed to the public.

Matters To Be Considered

Parts Open to the Public

1. Approval of the minutes of the December 19, 2011 Board Member Meeting
2. Thrift Savings Plan Activity Report by the Executive Director
   a. Monthly Participant Activity Report
   b. Legislative Report
3. Quarterly Reports
   a. Investment Policy Review
   b. Vendor Financial Status Report
4. Annual Administrative Expenses Report
5. Audit Process Report

Parts Closed to the Public

6. Security
7. Procurement

Contact Person for More Information

Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: January 17, 2012.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2012–1146 Filed 1–17–12; 4:15 pm]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

[File No. 112 3210]

CVS Caremark Corporation; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 13, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''CVS Caremark, File No. 112 3210'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/cvscaremarkcorpconsent,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lisa Weintraub Schifferle (202) 326–3377) or Meredyth Smith Andrus (202) 326–2863), Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 12, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 6, 2012. Write ''CVS Caremark, File No. 112 3210'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/cvscaremarkcorpconsent* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''CVS Caremark, File No. 112 3210'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 13, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from CVS Caremark Corporation (''CVSC'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

CVSC is a pharmacy services company that, among other things, markets and sells Medicare drug plans and Medicare Part D drugs. CVSC currently owns multiple subsidiaries, including RxAmerica, that offer Medicare Part D prescription drug plans. Medicare Part D is a prescription drug benefit for consumers with Medicare coverage, primarily seniors and persons with disabilities. To obtain Part D benefits, beneficiaries must enroll in a Medicare drug plan administered by an insurer or other private company approved by the Centers for Medicare & Medicaid Services (''CMS''). Beneficiaries can shop for a Medicare drug plan by looking up plan benefits and drug costs on a provider's Web site, by going onto CMS' Medicare Web site and using the web-based tool known as Plan Finder, or by visiting other third-party Web sites where such information is posted. Once enrolled, beneficiaries generally have cost sharing obligations until the total cost of their drugs reaches what is known as the coverage gap or ''donut hole,'' at which point the beneficiary pays the full cost of the drugs.

The Commission's complaint alleges that CVSC, through its subsidiary RxAmerica, violated Section 5 of the FTC Act by misrepresenting that the prices of covered Medicare Part D prescription drugs, as posted on Plan Finder and on the Web sites of RxAmerica and other third parties from approximately 2007 until the end of 2008, were accurate estimates of the prices that beneficiaries would pay for those drugs at CVS and Walgreens. Rather, the prices charged to RxAmerica beneficiaries who purchased their covered Part D generic drugs from CVS Pharmacy or Walgreens during the relevant time period were significantly higher—in some cases as much as ten times higher—than the prices posted on those Web sites. As a result of this

pricing discrepancy, many RxAmerica beneficiaries using CVS Pharmacy and Walgreens stores ran through their benefits coverage at faster rates than they would have based on the posted prices. Many beneficiaries, therefore, unexpectedly entered the donut hole and became responsible for the total cost of their prescription drugs, with no opportunity to change plans until the next calendar year.

To remedy the violations charged and to prevent CVSC from engaging in the future in practices similar to those alleged in the complaint, the proposed order contains injunctive provisions and a consumer redress program.

Section I of the proposed order prohibits CVSC from misrepresenting the price or cost of Medicare Part D prescription drugs, or other prices or costs associated with Medicare Part D prescription drug plans.

Section II of the proposed order requires CVSC, within five (5) days of the date the order becomes final, to pay the Commission $5 million for consumer redress and administrative costs. This provision specifies that the Commission may apply any remaining funds after redress is completed for such other equitable relief as it determines to be reasonably related to CVSC's practices alleged in the complaint. Any remaining funds not used for such equitable relief shall be deposited into the United States Treasury as disgorgement. Section III of the proposed consent order requires CVSC to produce certain information necessary for the Commission to administer consumer redress.

Sections IV through VIII of the proposed order are reporting and compliance provisions. Section IV requires CVSC to retain documents relating to its compliance with the order for a five (5) year period. Section V requires dissemination of the order now and in the future to all current and future subsidiaries, current and future principals, officers, directors, and managers, and to persons with responsibilities relating to the subject matter of the order. It also requires CVSC to secure a signed and dated statement acknowledging receipt of the order from all persons who receive a copy of the order pursuant to Section V. Section VI ensures notification to the Commission of changes in corporate status. Section VII mandates that CVSC submit a compliance report to the Commission within sixty (60) days, and periodically thereafter as requested. Section VIII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–876 Filed 1–18–12; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0080; Docket 2011–0016; Sequence 9]

General Services Administration Acquisition Regulation; Information Collection; Contract Financing Final Payment (GSAR Part 532 and 552.232–72; GSA Form 1142 Release of Claims)

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement and the reinstatement of GSA Form 1142, Release of Claims, regarding final payment under construction and building services contract. GSA Form 1142 was inadvertently deleted as part of the rewrite of GSAR regulations on Contract Financing. GSA Contracting Officers have used this form to achieve uniformity and consistency in the release of claims process.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: March 19, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, General Services Acquisition Policy Division, GSA, (202) 357–9652 or email *Dana.Munson@gsa.gov.*

ADDRESSES: Submit comments identified by *Information Collection 3090–0080, Contract Financing Final Payment; (GSAR Part 532 and 552.232–72; GSA Form 1142, Release of Claims)* by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 3090–0080, Contract Financing Final Payment; (GSAR Part 532 and 552.232–72; GSA Form 1142, Release of Claims),'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0080, Contract Financing Final Payment; (GSAR Part 532 and 552.232–72; GSA Form 1142, Release of Claims).'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0080, Contract Financing Final Payment; (GSAR Part 532 and 552.232–72; GSA Form 1142, Release of Claims),'' on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0080, Contract Financing Final Payment; (GSAR Part 532 and 552.232–72; GSA Form 1142, Release of Claims).

Instructions: Please submit comments only and cite Information Collection 3090–0080, Contract Financing Final Payment; (GSAR Part 532 and 552.232–72; GSA Form 1142, Release of Claims), in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION

A. Purpose

The General Services Administration Acquisition Regulation (GSAR) clause 552.232–72 requires construction and building services contractors to submit a release of claims before final payment is made to ensure contractors are paid in accordance with their contract requirements and for work performed. GSA Form 1142, Release of Claims is used to achieve uniformity and consistency in the release of claims process.

B. Annual Reporting Burden

Respondents: 2000.
Responses per Respondent: 1.
Hours per Response: .1.
Total Burden Hours: 200.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0080, Contract Financing Final Payment; (GSAR Part 532 and 552.232–72; GSA Form 1142, Release of Claims), in all correspondence.

Dated: January 6, 2012.

Joseph A. Neurauter,

Director, Office of Acquisition Policy, Senior Procurement Executive.

[FR Doc. 2012–903 Filed 1–18–12; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on February 1, 2012, from 10 a.m. to 3 p.m./Eastern Time.

Location: Washington Marriot Metro Center, 775 12th Street NW., Washington, DC, 20005. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov*

Contact Person: Mary Jo Deering, Office of the National Coordinator, HHS, 330 C Street SW., Washington, DC 20201, (202) 260–1944, Fax: (202) 690–6079, email: *maryjo.deering@hhs.gov* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Meaningful Use Workgroup, and updates from ONC and other Federal agencies. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroup's meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Mary Jo Deering at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: January 11, 2012.

Mary Jo Deering,

Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2012–1012 Filed 1–18–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on February 29, 2012, from 9 a.m. to 3 p.m./Eastern Time.

Location: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, US, 20008. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov.*

Contact Person: Mary Jo Deering, Office of the National Coordinator, HHS, 330 C Street SW., Washington, DC 20201, (202) 260–1944, Fax: (202) 690–6079, email: *maryjo.deering@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Clinical Operations, Vocabulary Task Force, Clinical Quality, Implementation, and Enrollment Workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views,

orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 17, 2011. Oral comments from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes each. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Mary Jo Deering at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: January 11, 2012.

Mary Jo Deering,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2012–1013 Filed 1–18–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Public Comment on Nominations and Call for Additional Nominations to the Report on Carcinogens

AGENCY: Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

ACTION: Request for Public Comment and Call for Nominations.

SUMMARY: The NTP requests comments on several substances, mixtures, and exposure circumstances (collectively referred to as ''substances'') nominated for possible review for future editions of the Report on Carcinogens (RoC). The NTP also invites the nomination of additional substances.

DATES: The deadline for submission of public comments on the nominated substances is February 28, 2012; comments submitted after this date will be considered as time permits. There is no deadline for submission of new nominations.

ADDRESSES: Comments should be sent to Dr. Ruth Lunn, Director, Office of the RoC, DNTP, NIEHS, P.O. Box 12233, MD K2–14, Research Triangle Park, NC 27709; telephone (919) 316–4637; Fax: (919) 541–0144; *lunn@niehs.nih.gov.* Courier address: NIEHS, Room 2138, 530 Davis Drive, Morrisville, NC 27560.

FOR FURTHER INFORMATION CONTACT: Dr. Ruth Lunn (telephone: (919) 316–4637 or email *lunn@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Background Information on the RoC

The RoC is a congressionally mandated document that identifies and discusses substances that may pose a hazard to human health by virtue of their carcinogenicity. Substances are listed in the report as either known or reasonably anticipated human carcinogens. The NTP prepares the RoC on behalf of the Secretary of Health and Human Services following a formal, multi-step process for review and evaluation of selected substances. The evaluation process was recently revised and the final process is available on the RoC Web site (*http://ntp.niehs.nih.gov/go/rocprocess*). Information about the RoC is available on the RoC Web site (*http://ntp.niehs.nih.gov/go/roc*) or by contacting Dr. Lunn (see **FOR FURTHER INFORMATION CONTACT**).

Request for Public Comment on Nominations to the RoC

The NTP requests public comment on the substances listed below that have been nominated for possible review for future editions of the RoC (for more information, see *http://ntp.niehs.nih.gov/go/rocnom*). Specifically, the NTP requests information on each substance for the following topics: (1) Data on current production, use patterns, and human exposure, where relevant; (2) information about published, ongoing, or planned studies related to evaluating carcinogenicity; (3) scientific issues important for assessing carcinogenicity of the substance; and (4) names of scientists with expertise or knowledge about the substance. Please include any available bibliographic citations for the information. The NTP will use this information for identifying nominated substances to propose for formal evaluation for the RoC.

Persons submitting public comments are asked to include their name, contact information, affiliation, and sponsoring organization (if any) and to send them to Dr. Lunn (see **ADDRESSES** above). All information received will be posted on the RoC Web site and the submitter identified by name, affiliation, and sponsoring organization, if applicable. The deadline for submission of public comment is February 28, 2012. Comments and information received after that date will be added to the public record and used by the NTP, as time permits, in considering whether to propose a substance for evaluation for the RoC.

Some Substances Nominated to the RoC*

- alkenylbenzenes (selected dietary: estragole, myristicin, isosafrole)
- 1-bromopropane
- carbon black
- cumene
- diesel exhaust particulates
- ethylbenzene
- *Helicobacter pylori*
- indium compounds
- iron (excess) or iron overload
- pentachlorophenol
- shiftwork involving light at night
- *ortho*-toluidine
- trichloroethylene
- uranium (depleted)
- viruses (selected): Kaposi's sarcoma—associated herpesvirus, Epstein-Barr virus (EBV), human T-cell lymphotropic virus type 1 (HTLV–1), human immunodeficiency virus (HIV), and Merkel cell polyomavirus

* Nominations to the RoC may seek to list a new substance in the report, reclassify the listing status of a substance already listed, or remove a listed substance.

Request for Additional Nominations to the RoC

The NTP solicits and encourages the broadest participation possible from interested individuals or parties in nominating substances for the RoC. A nomination may seek to list a new substance in the report, reclassify the listing status of a substance already listed, or remove a listed substance. Nominations should contain (1) a rationale or reason for the RoC review and, if possible, appropriate background information and relevant data to support the rationale (e.g., journal articles, NTP Technical Reports, International Agency for Research on Cancer listings, exposure surveys, or release inventories) and (2) the nominator's name, affiliation, contact information, and

sponsoring organization (if any). Nominations should be sent to Dr. Lunn (see **ADDRESSES**) or submitted online via the NTP Web site (*http://ntp.niehs.nih.gov/go/27911*). There is no deadline for the submission of new nominations.

Dated: January 9, 2012.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2012–875 Filed 1–18–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary, Office of the Assistant Secretary for Administration; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (HHS) is being amended at Chapter ABE, Office of Security and Strategic Information, which was last amended at 72 FR 19000–01, dated April 16, 2007, and at Chapter AJ, Office of the Assistant Secretary for Administration (ASA), which was last amended at 74 FR 57679–57682, dated November 9, 2009, and most recently at 75 FR 369–370, dated January 5, 2010, as follows:

A. Under Part A, delete Chapter ABE, Office of Security and Strategic Information, in its entirety.

B. Under Part A, Chapter AJ, ''Section AJ.00 Mission,'' delete in its entirety and replace with the following:

Section AJ.00 Mission. The Office of Assistant Secretary for Administration (ASA) performs for the Secretary the administrative functions of the Department. Manages policies and programs for human resources, equal employment opportunity, information resources management, security, counterintelligence, strategic information, logistics, and travel, as well as the general administrative activities of the Department and other administrative duties as assigned from time to time. Provides leadership and oversight direction to the activities of the Program Support Center.

C. Under Part A, Chapter AJ, ''Section AJ.10 Organization,'' delete in its entirety and replace with the following:

Section AJ.10 Organization. The Office of the Assistant Secretary for Administration (ASA) is under the direction of the Assistant Secretary for Administration, who reports to the Secretary, and consists of the following components:

- Immediate Office (AJ)
- Office of Human Resources (AJA)
- Office for Facilities Management and Policy (AJE)
- Office of the Chief Information Officer (AJG)
- Office of Business Management and Transformation (AJJ)
- Office of Security and Strategic Information (AJS)
- Program Support Center (P)

D. Under Part A, Chapter AJ, ''Section AJ.20 Functions,'' delete the first paragraph, ''Office of Human Resources (AJA),'' in its entirety and replace with the following:

Office of Human Resources (AJA). The Office of Human Resources (OHR) provides leadership in the planning and development of personnel policies and human resource programs that support and enhance the Department's mission. OHR also provides technical assistance to the Operating Divisions (OPDIVs) to most effectively and efficiently accomplish the OPDIV's mission through improved planning and recruitment of human resources and serves as the Departmental liaison to central management agencies on related matters. OHR also provides leadership in creating and sustaining a diverse workforce and an environment free of discrimination at HHS through efforts that include policy development, oversight, resource management, commemorative events, and standardized education and training programs.

E. Under Part A, Chapter AJ, ''Section AJ.20 Functions,'' delete the fourth paragraph, ''Office of Diversity Management and Equal Employment Opportunity (AJI),'' in its entirety.

F. Under Part A, Chapter AJ, ''Section AJ.20 Functions,'' insert the following new paragraph at the end of the section:

Office of Security and Strategic Information (AJS). The Office of Security and Strategic Information is headed by the Deputy Assistant Secretary for Security who serves as the Secretary's Senior Intelligence Official and reports directly to the Deputy Secretary on intelligence and counterintelligence issues and to the Assistant Secretary for Administration on all other issues. The Office of Security and Strategic Information provides Department-wide leadership, direction, policy guidance, execution support, and oversight for the following areas: Personnel security and suitability; physical security; critical infrastructure protection; secure systems access and classified information security management, including original classification authority and declassification authority; strategic information; and counterintelligence. The Office also provides leadership and execution of security functions for the Office of the Secretary.

F. Delegation of Authority. Pending further redelegation, directives or orders made by the Secretary, Deputy Secretary, or ASA, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

Dated: January 3, 2012.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–1011 Filed 1–18–12; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–12–11JY]

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) 639–7570 or send an email 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

Barriers to Occupational Injury Reporting by Workers: A NEISS–Work Telephone Interview Survey—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Each year about 5,400 workers die from a work-related injury and 4 million private industry workers report a nonfatal injury or illness. There are 3.4 million workers treated in U.S. hospital emergency departments annually for nonfatal occupational injuries and illnesses [1]. Although studies indicate that we have reduced the number of nonfatal injuries in recent decades, there is evidence that nonfatal occupational injury surveillance significantly underreports workplace injuries. This presumed undercount potentially decreases health and safety funding because of a false sense of improvement and increases the misdirection of scarce safety and health resources. It is this basic need for reliable and comprehensive occupational injury surveillance that led to the 1987 National Academy of

Science report *Counting Injuries and Illnesses in the Workplace—Proposals for a Better System* [6] and the 2008 Congressional report *Hidden Tragedy: Underreporting of Workplace Injuries and Illnesses* [1].

The proposed pilot research addresses two facets of nonfatal occupational injury reporting noted in these reports—understanding barriers and incentives to reporting occupational injuries and using this knowledge to assess and improve our surveillance activities. The objectives of this project are to (1) Characterize and quantify the relative importance of incentives and disincentives to self-identifying work-relatedness at the time of medical treatment and to employers; (2) characterize individual and employment characteristics that are associated with non-reporting of workplace injuries and incentives and disincentives to reporting; (3) test the reliability of hospital abstractors to properly distinguish between work-related and non-work-related injuries; and (4) evaluate the feasibility, need, and requirements for a future larger study.

This project will use the occupational and the all injuries supplements to the National Electronic Injury Surveillance System (NEISS–Work and NEISS–AIP, respectively) to identify telephone interview survey participants. NEISS–Work and NEISS–AIP, collected by the Consumer Product Safety Commission (CPSC), capture people who were treated in the emergency department (ED) for a work-related illness or injury (NEISS–Work) or any injury, regardless of work-relatedness (NEISS–AIP). Interview respondents will come from two subgroups—individuals treated for a work-related injury and individuals who were treated for a non-work-related injury but who were employed during the time period that the injury occurred.

Data collection for the telephone interview survey will be done via a questionnaire. This questionnaire contains questions about the respondent's injury that sent them to the ED, the characteristics of the job they were working when they were injured, their experiences reporting their injury to the ED and their employer (if applicable), and their beliefs about the process and subsequent consequences of reporting an injury. The questionnaire was designed to take 30 minutes to complete. Individuals who were not employed at the time the injury occurred or was made worse; who are younger than age 20 or older than age 64; who do not speak English; who were employed on a farm or ranch or were self-employed, an independent contractor, or a day laborer at the time of injury; who did not experience an acute injury; or who missed more than three days from work because of the injury will be screened out at the beginning of the interview.

Approximately 1200 interviews will be completed over the two year period of the study. The only cost to the respondent will be the cost of their time spent on the phone completing the telephone interview survey. The estimated annualized burden hours are 300.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	No. of respondents	Average burden per response (in hours)
U.S. workers presenting to an emergency department	600	30/60

Dated: January 12, 2012.

Kimberly Lane,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2012–924 Filed 1–18–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–12–11KF]

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) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Pre-Evaluation Assessments of Nutrition, Physical Activity and Obesity Programs and Policies—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The causes of obesity in the United States are complex and numerous, and they occur at many levels. In 2009, CDC issued guidance outlining 24 community-based strategies to encourage healthy eating and active living. Some of these strategies are being implemented by CDC awardees and other organizations. CDC plans to collect preliminary information about the effectiveness, in practice, of a selected group of the 24 recommended strategies. A systematic screening and assessment process will be used to identify programs for further evaluation.

CDC will select programs for initial assessment by reviewing completed program nomination forms. Forms can be submitted by states and jurisdictions funded through CDC's Nutrition, Physical Activity and Obesity (NPAO) cooperative agreement program, states and jurisdictions that do not currently have NPAO funding, and other organizations. Nominations may be submitted on-line or in hardcopy format. The nomination form includes a general program description, and an overview of organizational capacity. It will also include a summary of the program's potential impact, reach to target population, feasibility, transportability, acceptability to stakeholders, and sustainability. CDC anticipates reviewing an average of 51 program nomination forms per year.

CDC will also collect information through semi-structured, in-person interviews with approximately 12 key informants at each site selected for assessment. Respondents at each site will include the lead administrator, three program staff, an evaluator, and seven public and private sector partners and other stakeholders. Public and private sector partners and other stakeholders will be drawn from the state, local, and tribal government sector

and the private sector. The topics to be addressed during the one- to two-hour interviews include an overview of the initiative and descriptions of stakeholder involvement, evaluation plans, and funding. The lead administrator for each program initiative will also provide the information needed to coordinate the site visit and interviews.

Results will be used to identify local achievements and promising practices in nutrition, physical activity, and obesity prevention; to provide feedback and technical assistance to each initiative's developers, implementers and managers; and to assess the evaluation readiness of promising initiatives.

Up to 23 program initiatives will be selected for pre-assessment evaluation over a two-year period. OMB approval is requested for two years. Site visits will be conducted with an average of 12 programs per year. Participation is voluntary and there are no costs to respondents other than their time. The total estimated annualized burden hours are 291.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Nominator	Nomination Form	51	1	1
Lead Administrator	Site Visit Availability Calendar	12	1	1
	Suggested Interviewees Form	12	1	1
	Site Visit Schedule Instructions and Template.	12	1	5
	Interview Guide for Lead Administrator	12	1	2
Evaluator	Interview Guide for Evaluator	12	1	1
Program Staff	Interview Guide for Program Staff	36	1	1
Public Sector Partners (State, Local and Tribal Govt. Partners).	Interview Guide for Public and Private Sector Partners/Other Stakeholders.	48	1	1
Private Sector Partners	Interview Guide for Public and Private Sector Partners/Other Stakeholders.	36	1	1

Dated: January 12, 2012.

Kimberly Lane,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2012–923 Filed 1–18–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2012–0001]

Request for Information on Youth Violence

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The Centers for Disease Control and Prevention, is seeking on behalf of the Department of Health and Human Services information for an anticipated Surgeon General response to the public health problem of youth violence.

DATES: Individuals and organizations interested in providing information must submit their comments on/or before February 21, 2012. Comments received after this date will not be considered.

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

- *Internet:* Electronic comments may be sent via *http://www.regulations.gov,* docket control number CDC–2012–0001. Please follow the directions on the site to submit comments; or
- *Mail:* Comments may also be sent by mail to the attention of Kesha Offutt, Office of Policy, Planning, and Evaluation, National Center for Injury Prevention and Control, CDC, 4770 Buford Hwy., Mail Stop F–63, Atlanta, GA 30341.

All relevant comments will be posted without change to *http://www.regulations.gov* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Lesley M. Russell BSc (Hons), BA, Ph.D., Senior Public Health Advisor for Outreach and Policy, Office of the US Surgeon General, by telephone at (202) 401–9586, or email at *Lesley.Russell@hhs.gov.*

SUPPLEMENTARY INFORMATION:

Scope of Problem: Youth violence is a significant public health problem with the potential for immediate and lifelong harmful consequences. Although rates of youth violence have dropped since the peak levels in the early 1990s, risk for youth violence remains unacceptably high. Each day, an average of 16 young people between the ages of 10 and 24 years fall victim to homicide and another 1,700 are treated in emergency departments for nonfatal injuries from physical assaults. Youth violence also is associated with high rates of emotional and social difficulties, alcohol and substance use, and academic failure. The damage resulting from youth violence extends beyond the young perpetrators and victims. Violence can increase a community's health care costs, decrease property values, and disrupt social services. Each year, youth homicides and assault-related injuries result in an estimated $14.1 billion in combined medical and work loss costs. These losses and expenditures deprive us of our next generation of healthy and productive citizens and restrict our opportunities to invest in other areas that our nation views as critical.

Approach: The Office of the Surgeon General is interested in increasing attention to the issue of youth violence in the United States and the science that demonstrates youth violence can be prevented from occurring. This document would build on the 2001 Surgeon General's report on youth violence along with 10 years of experience in the field to help our nation understand the causes and impacts of youth violence and how to prevent it from occurring in the first place.

Potential Areas of Focus: CDC is interested in receiving information on the following:

(1) What is the extent of the problem and its consequences.

(2) What are the differences in youth violence prevalence among subgroups and communities and how might they inform prevention approaches.

(3) What is the availability and adaptability of evidence-based prevention programs.

Purpose of Notice: The purpose of this notice is to provide individuals and organizations the opportunity to identify issues and areas of need for consideration as we gather information to inform the Surgeon General's document on youth violence. All comments will receive careful consideration.

Dated: January 5, 2012.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2012–918 Filed 1–18–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Tribal Consultation; Notice of Meeting

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of Tribal Consultation.

SUMMARY: The Department of Health and Human Services (HHS), Administration for Children and Families (ACF) will host a Tribal Consultation to consult on ACF programs and tribal priorities.

DATES: March 5–6, 2012.

ADDRESSES: Renaissance Hotel, 999 9th Street NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Lillian A. Sparks, Commissioner, Administration for Native Americans at (202) 401–5590, by email at *Lillian.sparks@acf.hhs.gov,* or by mail at 370 L'Enfant Promenade SW., 2 West, Washington, DC 20447.

SUPPLEMENTARY INFORMATION: On November 5, 2009, President Obama signed the ''Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation.'' The President stated that his Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications, including, as an initial step, through complete and consistent implementation of Executive Order 13175.

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes.

HHS has taken its responsibility to comply with Executive Order 13175 very seriously over the past decade, including the initial implementation of a Department-wide policy on tribal consultation and coordination in 1997, and through multiple evaluations and revisions of that policy, most recently in 2008. Many HHS agencies have already developed their own agency-specific consultation policies that complement the Department-wide efforts.

In August 2011, ACF issued its Consultation Policy in partnership with tribes. This policy will help our program offices and program office regional presence to better engage Federally Recognized Indian Tribes in the development or revision of policies, regulations, and proposed legislation that impact American Indians. ACF firmly believes that in order to create a good working relationship with tribes, it starts with requesting and receiving input from the tribes to ensure that we are meeting their needs and to establish a partnership that can carry us into the future.

Testimonies may be submitted no later than February 24, 2012, to: Lillian Sparks, Commissioner, Administration for Native Americans, 370 L'Enfant Promenade SW., Washington, DC 20447. *anacommissioner@acf.hhs.gov*.

However, this deadline does not preclude anyone from providing testimony at the session and we will, to the extent that time allows, hear your testimony. If you plan on attending to present your testimony, please provide the name, title, and tribe of the individual who will be presenting to Kimberly Romine. Ms. Romine may be reached at *Kimberly.romine@acf.hhs.gov* or by phone at (202) 205–5603. In order to facilitate the discussion, we ask that presenters provide a brief overview of the testimony and include the specific issues to be addressed at the session. For any tribe unable to attend to present testimony, please be aware that ACF will keep the testimony record open for 30 days after the date of the consultation. After 30 days, ACF will provide written responses to all testimonies received, including those that were presented in person. To register for the consultation, please submit your name, tribe or organization, phone, and email address to Ms. Romine.

In addition to the Tribal Consultation session, ACF will be hosting a half day Tribal Training and Technical Assistance session to provide information about ACF programs, and ACF's Integration and Interoperability Initiative. The Tribal Training and Technical Assistance session will be held the morning of March 5, 2012, in the same room as the Tribal Consultation session.

Dated: January 11, 2012.

George H. Sheldon,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2012–1009 Filed 1–18–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Data System for Organ Procurement and Transplantation Network and Associated Forms (OMB No. 0915–0157)—Extension

Section 372 of the Public Health Service (PHS) Act requires that the Secretary, by contract, provide for the establishment and operation of an Organ Procurement and Transplantation Network (OPTN). The OPTN, among other responsibilities, operates and maintains a national waiting list of

individuals requiring organ transplants, maintains a computerized system for matching donor organs with transplant candidates on the waiting list, and operates a 24-hour system to facilitate matching organs with individuals included in the list. Data for the OPTN data system are collected from transplant hospitals, organ procurement organizations, and tissue-typing laboratories. The information is used to indicate the disease severity of transplant candidates, to monitor compliance of member organizations with OPTN rules and requirements, and to report periodically on the clinical and scientific status of organ donation and transplantation in this country. Data are used to develop transplant, donation and allocation policies, to determine if institutional members are complying with policy, to determine member specific performance, to ensure patient safety when no alternative sources of data exist and to fulfill the requirements of the OPTN Final Rule. The practical utility of the data collection is further enhanced by requirements that the OPTN data must be made available, consistent with applicable laws, for use by OPTN members, the Scientific Registry of Transplant Recipients, the Department of Health and Human Services, and others for evaluation, research, patient information, and other important purposes.

The OPTN is recommending addition of a new Liver Explant Pathology form to the OPTN data system. This new form was developed by the OPTN Liver and Intestinal Organ Transplantation Committee and will be used to collect pathology data on liver transplant recipients who received waitlist exception points as a result of a diagnosis of hepatocellular carcinoma. Existing OPTN policy requires submission of post-transplant pathology reports by fax transmission, and the proposed form will provide standardized collection of this already-required information.

There are also minor revisions to the existing data collection forms; the added fields were inadvertently left off of the forms at the time of the initial submission. Several of these fields are ''read only'' and are included on the forms for information purposes only. One field is proposed to be removed as it represented duplicative information.

The annual estimate of burden is as follows:

Form	Number of respondents	Responses per respondents	Total responses	Hours per response	Total burden hours
Deceased Donor Registration	58	228	13,224	0.7500	9,918.00
Death referral data	58	12	696	10.0000	6,960.00
Death Notification Referral—Eligible	58	145	8410	0.5000	4,205.00
Death Notification Referral—Imminent	58	124	7192	0.5000	3,596.00
Living Donor Registration	311	23	7153	0.6500	4,649.45
Living Donor Follow-up	311	78	24,258	0.5000	12,129.00
Donor Histocompatibility	158	94	14,852	0.1000	1,485.20
Recipient Histocompatibility	158	171	27,018	0.2000	5,403.60
Heart Candidate Registration	131	27	3,537	0.5000	1,768.50
Lung Candidate Registration	66	41	2706	0.5000	1,353.00
Heart/Lung Candidate Registration	50	1	50	0.5000	25.00
Thoracic Registration	131	34	4454	0.7500	3,340.50
Thoracic Follow-up	131	277	36,287	0.6500	23,586.55
Kidney Candidate Registration	239	154	36,806	0.5000	18,403.00
Kidney Registration	239	72	17,208	0.7500	12,906.00
Kidney Follow-up *	239	693	165,627	0.5500	91,094.85
Liver Candidate Registration	132	98	12,936	0.5000	6,468.00
Liver Registration	132	48	6,336	0.6500	4,118.40
Liver Explant Pathology	132	11	1,452	0.3400	493.68
Liver Follow-up	132	459	60,588	0.5000	30,294.00
Kidney/Pancreas Candidate Registration	144	11	1,584	0.5000	792.00
Kidney/Pancreas Registration	144	6	864	0.9000	777.60
Kidney/Pancreas Follow-up	144	75	10,800	0.8500	9,180.00
Pancreas Candidate Registration	144	4	576	0.5000	288.00
Pancreas Islet Candidate Registration	23	5	115	0.5000	57.50
Pancreas Registration	144	2	288	0.7500	216.00
Pancreas Follow-up	144	23	3312	0.6500	2,152.80
Intestine Candidate Registration	43	5	215	0.5000	107.50
Intestine Registration	43	3	129	0.9000	116.10
Intestine Follow-up	43	25	1075	0.8500	913.75
Post Transplant Malignancy	689	11	7579	0.2000	1,515.80
Total			478,270		258,314.78

* Includes an estimated 2,430 kidney transplant patients transplanted prior to the initiation of the data system.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: January 12, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–954 Filed 1–18–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Information Technology Implementation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Noncompetitive Replacement Award to Tennessee Primary Care Association, Brentwood, Tennessee.

SUMMARY: The Health Resources and Services Administration (HRSA) will be transferring the American Recovery and Reinvestment Act (ARRA) (section 330 of the Public Health Service Act) Health Information Technology Implementation for Health Center Controlled Networks (HCCN) funds originally awarded to Community Health Network, Inc. (CHN), to the Tennessee Primary Care Association (TPCA) to ensure the implementation of a Health Center Controlled Network in the State of Tennessee.

SUPPLEMENTARY INFORMATION:

Former Grantee of Record: Community Health Network, Inc.

Original Period of Grant Support: June 1, 2010, to May 31, 2012.

Replacement Awardee: Tennessee Primary Care Association.

Amount of Replacement Award: $1,807,399.60.

Period of Replacement Award: The period of support for the replacement award is December 1, 2011, to May 31, 2012.

Authority: Section 330 of the Public Health Service Act, 42 U.S.C. 245b.

CFDA Number: 93.703

Justification for the Exception to Competition

The former grantee (CHN) relinquished the grant and its responsibilities due to financial difficulties as well as management and legal concerns. TPCA has been a HRSA funded Primary Care Association since 1985 and is a well established organization with sound fiscal and grants management operations.

In the effort to preserve the opportunity to advance information technology resources of the Tennessee's medically underserved communities, TPCA has demonstrated the capacity to fulfill the expectations of the original grant award and has collaborated with CHN's Board of Directors to plan for a smooth transition of the grant.

The transfer of these funds will ensure full implementation of the grant which will greatly advance the State of Tennessee's continuity of care and have a positive impact on population health. It will also help the participating health centers to meet requirements for Meaningful Use and Patient Centered Medical Home programs by the Centers for Medicare and Medicaid Services (CMS), the National Committee for Quality Assurance (NCQA) and/or the Joint Commission.

The implementation of a Health Center Controlled Network would assist with the advancement and effective use of Health Information Technology. These advancements will result in measurable improvements in patient outcomes and reductions of health disparities for underserved communities in the State of Tennessee. As a result, in order to ensure a timely implementation of a Health Center Controlled Network in the State of Tennessee as originally awarded, this replacement award will not be competed.

FOR FURTHER INFORMATION CONTACT: Ms. Mayra Nicolas via phone at (301) 594–4294 or via email at *mnicolas@hrsa.gov.*

Dated: January 10, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2012–964 Filed 1–18–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: February 7, 2012, 8:30 a.m. to 5 p.m.; February 8, 2012, 8:30 a.m. to 5 p.m.

Place: Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. Telephone: (703) 920–3230. Fax: (703) 271–5212.

Status: The meeting will be open to the public.

Purpose: The purpose of the meeting is to discuss services and issues related to the health of migrant and seasonal farmworkers and their families and to formulate recommendations for the Secretary of Health and Human Services.

Agenda: The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on farmworker issues, including the status of farmworker health at the local and national levels.

Agenda items are subject to change as priorities indicate.

FOR FURTHER INFORMATION CONTACT: Gladys Cate, Office of Special Population Health, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Room 15–62, Rockville, Maryland 20857; telephone (301) 594–0367.

Dated: January 12, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–959 Filed 1–18–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request: Solar Cell: A Mobile UV Manager for Smart Phones (NCI)

SUMMARY: 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 National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Solar Cell: A Mobile UV Manager for Smart Phones (NCI). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The overall goal of the study is to design a smart phone application, *Solar Cell,* which uses smart phone technology to aid users in protecting their skin from damaging ultraviolet radiation (UV) in sunlight, a primary cause of skin cancer. The purpose of this part of the study is to produce, deploy, and evaluate the

effectiveness of a state-of-the-art software application for smart phones (i.e., mobile application), ''*Solar Cell.*'' This software application supports decision-making related to sun protection and exposure by Americans to reduce the risk of developing skin cancer attributable to chronic and severe UV exposure and developing other cancers attributable to vitamin D deficiency. The *Solar Cell* mobile smart phone application combines personal and behavior data with geo-spatial data (i.e., UV Index forecast, time, and location) and delivers actionable sun protection advice to reduce risk of skin cancer. *Frequency of Response:* Once. *Affected Public:* Individuals. *Type of Respondents:* Adults (18 and over) from the U.S. population who own Android smart phones. The annual reporting burden is estimated at 673 (see Table below). There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

A.12–1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Instrument	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Annual burden hours
Adults	Screener (Appendix G)	1,875	1	15/60 (0.25)	469
	Pre-test (Appendix A)	245	1	20/60 (0.33)	82
	Post-test (Appendix B)	184	1	40/60 (0.66)	123
Totals		2,304			673

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.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Patricia Weber, DrPH, Program Director, NCI/NIH, SBIR Development Center, 6116 Executive Blvd., Suite 402, Rockville, MD 20852 or call non-toll-free number (301) 594–8106 or email your request, including your address to: *weberpa@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 11, 2012.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2012–872 Filed 1–18–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Advisory Council for Human Genome Research.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: February 13–14, 2012.

Open: February 13, 2012, 8:30 a.m. to 3 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20892.

Closed: February 13, 2012, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane Terrace Level Conference Room, Rockville, MD 20892.

Closed: February 14, 2012, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20892.

Contact Person: Mark S. Guyer, Ph.D., Director for Extramural Research National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892, (301) 496–7531 *guyerm@mail.nih.gov.*

Name of Committee: National Advisory Council for Human Genome Research.

Date: May 21–22, 2012.

Open: May 21, 2012, 8:30 a.m. to 3 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20892.

Closed: May 21, 2012, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20892.

*Closed:*May 22, 2012, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20892.

Contact Person: Mark S. Guyer, Ph.D., Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892, (301) 496–7531, *guyerm@mail.nih.gov.*

Name of Committee: National Advisory Council for Human Genome Research.

Date: September 10–11, 2012.

Open: September 10, 2012, 8:30 a.m. to 3 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20892.

Closed: September 10, 2012, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20892.

Closed: September 11, 2012, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20892.

Contact Person: Mark S. Guyer, Ph.D., Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892, (301) 496–7531, *guyerm@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.genome.gov/11509849,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 11, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–890 Filed 1–18–12; 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; NIAID Clinical Trial Planning and Implementation.

Date: February 6–7, 2012.

Time: 9 a.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: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities/NIAID, National Institutes of Health, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–2634, *james.snyder@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: January 11, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–885 Filed 1–18–12; 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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Subcommittee.

Date: February 8–9, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Nancy Lewis Ernst, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–7383, *nancy.ernst@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: January 11, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–884 Filed 1–18–12; 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 thediscussions 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; NIAID Clinical Trial Implementation Cooperative Agreement (U01).

Date: February 7–8, 2012.

Time: 2 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: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Room # 3257, Bethesda, MD 20892, (301) 435–1614, *james.snyder@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: January 11, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–883 Filed 1–18–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel; 2012–05 Health Disparity SBIR Review.

Date: March 2, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Ruixia Zhou, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Democracy Two Building, Suite 957, Bethesda, MD 20892, (301) 496–4773, *zhour@mail.nih.gov.*

Dated: January 11, 2012.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–878 Filed 1–18–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Development and Maintenance of a Multigenotypic Caloric Restricted Rodent Colony.

Date: February 9, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elaine Lewis, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 402–7707, *elainelewis@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Translational Research in Aging.

Date: March 13, 2012.

Time: 7:30 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20892.

Contact Person: Jeannette L. Johnson, Ph.D., Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 402–7705, *johnsonj9@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 12, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–968 Filed 1–18–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Network Facilities for Developing Areas of Investigation in the Basic Biology of Aging.

Date: February 9, 2012.

Time: 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bita Nakhai, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 402–7701, *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Treating Pain in the Elderly.

Date: March 1, 2012.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elaine Lewis, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 402–7707, *elainelewis@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 12, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–966 Filed 1–18–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Discovery for the Nervous System.

Date: January 27, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Geoffrey G Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, (301) 435–1235, *geoffreys@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 11, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–961 Filed 1–18–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Wireless Physiologic Telemetry for Interventional MRI.

Date: February 7, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David A. Wilson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7204, Bethesda, MD 20892–7924, (301) 435–0299, *wilsonda2@nhlbi.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; K99s Mentored Career Transition Scientist Award.

Date: February 9–10, 2012.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, (301) 435–0287, *Pintuccig@nhlbi.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; K23, K24, K25 Research Career Development Award.

Date: February 9–10, 2012.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Stephanie J. Webb, Ph.D., Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, (301) 435–0291, *stephanie.webb@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 11, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–958 Filed 1–18–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated, Review Group; Clinical Molecular Imaging and Probe Development.

Date: February 2–3, 2012.

Time: 7 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov*.

Name of Committee: Vascular and Hematology Integrated Review Group; Hypertension and Microcirculation Study Section.

Date: February 6–7, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Palace Hotel, 2 Montgomery Street, San Francisco, CA 94102.

Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, (301) 435–1777, *zouai@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review, Group; Synapses, Cytoskeleton and Trafficking Study Section.

Date: February 9–10, 2012.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Jonathan K. Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Glia Study Section.

Date: February 9–10, 2012.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Toby Behar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

Date: February 9, 2012.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Maqsood A. Wani, Ph.D., DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7814, Bethesda, MD 20892, (301) 435–2270, *wanimaqs@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Hepatobiliary Pathophysiology Study Section.

Date: February 13–14, 2012.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bonnie L. Burgess-Beusse, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *beusseb@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 11, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–956 Filed 1–18–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Genetics of Heart, Lung and Blood Diseases Review.

Date: February 8, 2012.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael P. Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, (301) 496–9659, *reillymp@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 12, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–955 Filed 1–18–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Blood Cell Therapies.

Date: February 7–8, 2012.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bukhtiar H Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806–7314, *shahb@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Immunopathology and Immunotherapy Study Section.

Date: February 9–10, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Old Town Alexandria, 901 North Fairfax Street, Alexandria, VA 22314.

Contact Person: Denise R Shaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, (301) 435–0198, *shawdeni@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Kidney Molecular Biology and Genitourinary Organ Development.

Date: February 9, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1480 Crystal Drive, Arlington, VA 22202.

Contact Person: Ryan G Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, (301) 435–1501, *morrisr@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Language and Communication Study Section.

Date: February 13, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Weijia Ni, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 237–9918, *niw@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Molecular and Cellular Endocrinology Study Section.

Date: February 13, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John Bleasdale, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–4514, *bleasdaleje@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics A Study Section.

Date: February 13–14, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael M Sveda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1114, MSC 7890, Bethesda, MD 20892, (301) 435–3565, *svedam@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Computational Modeling and Sciences for Biomedical and Clinical Applications.

Date: February 13, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, (301) 237–9870, *xuguofen@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Biology of the Visual System Study Section.

Date: February 13–14, 2012.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael H Chaitin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bone and Cartilage Biology.

Date: February 13, 2012.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Baljit S Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, (301) 435–1777, *moongabs@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: January 12, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–953 Filed 1–18–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders B.

Date: February 23, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, NSC, 6001 Executive Blvd., Room 3202, MSC 9529, Bethesda, MD 20892–9529, (301) 496–3562 *neuhuber@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: January 12, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–952 Filed 1–18–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Toolkit Protocol for the Crisis Counseling Assistance and Training Program (CCP)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) will create a toolkit to be used for the purposes of collecting data on the Crisis Counseling Assistance and Training Program (CCP). The CCP provides supplemental funding to states and territories for individual and community crisis intervention services during a Federal disaster.

The CCP has provided disaster mental health services to millions of disaster survivors since its inception and, as a result of 30 years of accumulated expertise, it has become an important model for Federal response to a variety of catastrophic events. State CCPs, such as the recent 2009 Project A'apa Atu (for the Tsunami in American Samoa), 2010 Tennessee Recovery Project (following devastating flooding), Healing Joplin and Project Rebound (following the 2011 tornadoes in Joplin, Missouri and Alabama), and most recently the multiple CCPs that resulted from 2011 Hurricane Irene, and flooding throughout the summer of 2011 have primarily addressed the short-term mental health needs of communities through (a) Outreach and public education, (b) individual and group counseling, and (c) referral. Outreach and public education serve primarily to normalize reactions and to engage people who might need further care. Crisis counseling assists survivors to cope with current stress and symptoms in order to return to predisaster functioning. Crisis counseling relies largely on ''active listening,'' and crisis counselors also provide psycho-education (especially about the nature of responses to trauma) and help clients build coping skills. Crisis counseling typically continues no more than a few times. Because crisis counseling is time-limited, referral is the third important function of CCPs. Counselors are expected to refer clients to formal treatment if the person has developed more serious psychiatric problems.

Data about services delivered and users of services will be collected throughout the program period. The data will be collected via the use of a toolkit that relies on standardized forms. At the program level, the data will be entered quickly and easily into a

cumulative database to yield summary tables for quarterly and final reports for the program. We have confirmed the feasibility of using scanable forms for most purposes. Because the data will be collected in a consistent way from all programs, they can be uploaded into an ongoing national database that likewise provides CMHS with a way of producing summary reports of services provided across all programs funded.

The components of the toolkit are listed and described below:

• *Encounter logs.* These forms document all services provided. Completion of these logs is required by the crisis counselors. There are three types of encounter logs: (1) Individual Crisis Counseling Services Encounter Log; (2) Group Encounter Log; and (3) Weekly Tally Sheet.

○ Individual Crisis Counseling Services Encounter Log. Crisis counseling is defined as an interaction that lasts at least 15 minutes and involves participant disclosure. This form is completed by the Crisis Counselor for each service recipient, defined as the person or persons who actively participated in the session (e.g., by verbally participating), not someone who is merely present. For families, complete separate forms for all family members who are actively engaged in the visit. Information collected includes demographics, service characteristics, risk factors, and referral data.

○ Group Encounter Log. This form is used to identify either a group crisis counseling encounter or a group public education encounter. A check at the top identifies the class of activities (i.e., counseling or education). Information collected includes services characteristics, group identity and characteristics, and group activities.

○ Weekly Tally Sheet. This form documents brief educational and supportive encounters not captured on any other form. Information collected includes service characteristics, daily tallies and weekly totals for brief educational or supportive contacts, and material distribution with no or minimal interaction.

• *Assessment and Referral Tool.* This tool provides descriptive information about intense users of services, defined as all individuals receiving a third individual crisis counseling visit. This tool will be used beginning three months postdisaster and will be completed by the crisis counselor.

• *Participant Feedback.* These surveys are completed by and collected from a sample of service recipients, not every recipient. A time sampling approach (e.g., soliciting participation from all counseling encounters one week per quarter) will be used. Information collected includes satisfaction with services, perceived improvements in self-functioning, types of exposure, and event reactions.

• *CCP Service Provider Feedback.* These surveys are completed by and collected from the CCP service providers anonymously at six months and one year postevent. The survey will be coded on several program-level as well as worker-level variables. However, the program itself will be identified and shared with program management only if the number of individual workers was greater than 20.

There are no changes to the Individual Encounter Log, Group Encounter Log, the Adult Assessment and Referral Tool, the Participant Feedback Survey, the Service Provider Feedback Survey, and the Child/Youth Assessment and Referral Tool. The Weekly Tally Sheet is the only one that has been revised with two additional fields to obtain information on social media activities.

The table below is the estimates of annualized hour burden.

Form	Number of respondents	Responses per respondents	Hours per responses	Total hour burden
Individual Crisis Counseling Services Encounter Log	200	280	.08	4,480
Group Encounter Log	100	33	.07	231
Weekly Tally Sheet	200	33	.2	1,320
Assessment and Referral Tools	200	14	.25	700
Participant Feedback Survey	1,000	1	.25	250
Service Provider Feedback Survey	100	1	.25	25
Total	1,800			7,006

Written comments and recommendations concerning the proposed information collection should be sent by February 21, 2012 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: (202) 395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Janine Denis Cook,

Chemist.

[FR Doc. 2012–915 Filed 1–18–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–1156]

Draft Guidance Regarding Inspection and Certification of Vessels Under the Maritime Security Program

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of a draft Navigation and Inspection Circular (NVIC) that sets forth the Coast Guard's policies and procedures regarding the inspection and certification of vessels under the

Maritime Security Program (MSP). The draft NVIC provides a comprehensive approach to the MSP inspection process through the establishment of two levels of MSP inspection and oversight. This notice solicits public comment on the impacts that the policies and procedures contained in this draft NVIC would have on applicable vessels and other affected parties.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before March 19, 2012 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2011–1156 using any one of the following methods:

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

(2) *Fax:* (202) 493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Mr. John Hannon, Domestic Vessels Division, U.S. Coast Guard; telephone (202) 372–1222, email *John.J.Hannon@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION

Public Participation and Request for Comments

We encourage you to submit comments and related material on the draft NVIC on Inspection and Certification of Vessels Under the Maritime Security Program. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2011–1156) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu, select ''Notices'' and insert ''USCG–2011–1156'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments and draft NVIC: To view the comments and draft NVIC, 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–2011–1156'' and click ''Search.'' If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

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

Background and Purpose

Title VI of the Merchant Marine Act of 1936 was amended by passage of the Maritime Security Act of 1996 (MSA), which authorized the establishment of a Maritime Security Fleet under the Maritime Security Program (MSP), which serves as a means for establishing a fleet of commercially viable and military useful vessels to meet national defense as well as other security requirements. The purpose of this draft Navigation and Inspection Circular (NVIC) is to provide the marine industry and Coast Guard personnel with uniform guidance regarding the MSP.

The U.S. Maritime Administration (MARAD) Office of Sealift Support is the lead governmental office responsible for administration of the MSP. MARAD, in coordination with the Department of Defense, established a program whereby certain categories of militarily useful commercial vessels may be designated for emergency service to carry military cargo in time of war, national emergency, or military contingency. Some vessels enrolled in the MSP may receive a payment as part of their enrollment. Alternatively, vessels may enroll in other voluntary sealift support programs established by MARAD. Both groups of vessels would utilize the process outlined in this draft NVIC to obtain a Coast Guard Certificate of Inspection (COI), provided they otherwise meet MSP enrollment criteria.

The MSA established standards for issuance of a COI to a previous foreign flag vessel transitioning to U.S. Flag once eligibility for the MSP has been established by MARAD and the Coast Guard (46 U.S.C. 53102(e)). The statute does not specify the scope or manner of the inspections to be carried out by the Coast Guard to verify that MSP vessels fulfill requirements necessary to receive and maintain a COI. To avoid the inconsistent application of inspection procedures under the MSP, this draft NVIC outlines the inspection process for such transitioning foreign flag vessels to obtain initial and ongoing certification under the MSP.

To promote consistency and standardization of Coast Guard policies and procedures, this draft NVIC provides a comprehensive approach to the MSP inspection process through the establishment of two levels of MSP inspection and oversight: (1) MSP (Regular); and (2) MSP Select. This two-level approach would enable the Coast Guard to apply traditional inspection methods to newly reflagged vessels, while at the same time apply a less stringent level of oversight to vessels that have consistently demonstrated satisfactory performance and substantial compliance with applicable rules. Newly enrolled MSP vessels would continue to be inspected by the Coast Guard in a manner similar to traditional Coast Guard inspections. After a period of evaluation, MSP vessels would be eligible to seek enrollment under MSP

Select. MSP Select vessel oversight would consist of risk-based vessel examinations, periodic oversight, and evaluations of Authorized Class Society (ACS) survey activities.

We request comments from all interested parties to ensure that the full range and significance of issues related to the Coast Guard's MSP inspection process are identified.

This notice is issued under authority of 5 U.S.C. 552(a) and 33 CFR 1.05–1.

Dated: January 12, 2012.

Paul F. Thomas,

Captain, U.S. Coast Guard, Acting Director, Prevention Policy.

[FR Doc. 2012–1004 Filed 1–18–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2011–0036]

Recovery Directorate Fact Sheet 9580.213, Residential Electrical Meter Repair—''Power Up''

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on Recovery Directorate Fact Sheet 9580.213, *Residential Electrical Meter Repair—''Power Up.''*

DATES: Comments must be received by February 21, 2012.

ADDRESSES: Comments must be identified by docket ID FEMA–2011–0036 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Lu Juana Richardson, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4014, *LuJuana.Richardson@dhs.gov.*

SUPPLEMENTARY INFORMATION

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the ''Privacy Notice'' link in the footer of *www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESSES** section above. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed policy is available in docket ID FEMA–2011–0036. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street SW., Washington, DC 20472.

II. Background

Under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and implementing regulations, FEMA may direct or reimburse activities to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe. Under that authority, FEMA may fund the repair of residential electrical meters damaged in a major disaster or emergency, when warranted by the incident and necessary to meet the immediate needs of disaster survivors. ''Power Up'' is intended to reduce the number of displaced disaster survivors needing shelter and allow for a faster recovery.

FEMA may provide this assistance to State, Tribal and local governments under the Public Assistance (PA) Program in the areas designated by a major disaster or emergency declaration where Individual Assistance (IA) has not been declared by the President. Reimbursement will be at the Federal cost share rate established in the Presidential declaration, which is generally 75%. If IA has been declared by the President, the IA Program will reimburse eligible residential meter repair to avoid any potential duplication of benefits.

FEMA seeks comment on the proposed policy, which is available online at *http://www.regulations.gov* in docket ID FEMA–2011–0036. Based on the comments received, FEMA may make appropriate revisions to the proposed policy. Although FEMA will consider any comments received in the drafting of the final policy, FEMA will not provide a response-to-comments document. When or if FEMA issues a final policy, FEMA will publish a notice of availability in the **Federal Register** and make the final policy available at *http://www.regulations.gov.*

Authority: 42 U.S.C. 5121–5207; 44 CFR part 206.

David J. Kaufman,

Director, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2012–931 Filed 1–18–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5609–N–01]

Notice of Proposed Information Collection for Public Comment: Choice Neighborhoods Evaluation, Phase I

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* March 19, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent electronically to *Paul.A.Joice@hud.gov* or in hard copy to: Paul Joice, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8120, Washington, DC 20410–6000. Please use ''Choice Neighborhoods Evaluation PRA Comment'' in the subject line of any email.

FOR FURTHER INFORMATION CONTACT: Paul Joice at (202) 402–4608 (this is not a toll-free number) or *Paul.A.Joice@hud.gov,* for copies of the proposed forms and other available

documents. Please use ''Choice Neighborhoods Evaluation PRA Comment'' in the subject line of any email.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Choice Neighborhoods Evaluation, Phase I.

OMB Control Number: Pending.

Description of the Need for the Information and Proposed Use: HUD is conducting an evaluation of the Choice Neighborhoods Initiative, focused on the initial round of grants funded in August 2011. This evaluation requires the collection of information from households living in the Choice Neighborhoods sites. This proposed information collection will support the first phase of the evaluation, which is focused on studying implementation of the grants and establishing a baseline for long-term evaluation of program outcomes. The information collection is necessary to understand the experience of the residents in the Choice Neighborhood sites.

Agency Form Numbers: None.

Members of the Affected Public: This information collection request will affect residents in assisted and unassisted housing in each of the sites. We will use a longitudinal resident tracking survey to examine resident outcomes over time. To monitor outcomes for assisted housing residents, the research team proposes conducting a multi-wave survey that tracks a representative sample of the original assisted housing residents during implementation and revitalization of the site. The survey will track outcomes of interest, including housing location and quality; and resident physical and mental health, safety, employment, and education.

To assess the outcomes of assisted residents, we will sample from the public housing developments at each site, including residents at the time of the survey as well as residents who relocated during 2012. We will oversample special populations (*e.g.,* disabled, seniors, large families, or limited English proficiency households) when appropriate. Our research design calls for the collection of a random sample at the Chicago and New Orleans sites, and assumes 250 completed surveys. At the Boston site we will obtain 100 completed surveys (i.e., as complete coverage as possible of the occupied units, with no oversampling). In the event that funding becomes available to support a survey of assisted residents at the Seattle and San Francisco sites, we will obtain 250 completed surveys at each site.

To allow for comparisons between assisted-households in units that will be transformed by the CNI and those in the neighborhood, the content of the unassisted resident survey and the assisted-resident will be as similar as possible. Part of this task will be to define the appropriate neighborhood boundary for the survey. Our goal is to have a minimum of 250 completed interviews with unassisted residents, with a larger sample in sites with bigger neighborhoods. Units will be drawn from a random sample of housing units in the defined neighborhood.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The following chart details the respondent burden:

	Assisted households	Other households	Total households	Hours per response	Total hours
New Orleans	250	250	500	.75	375
Chicago	250	250	500	.75	375
Boston	100	250	350	.75	262.5
Seattle	250	250	500	.75	375
San Francisco	250	250	500	.75	375
Total	1,100	1,250	2,350	.75	1,762.5

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 10, 2012.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2012–1006 Filed 1–18–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–FA–35]

Announcement of Funding Awards for the Rural Innovation Fund Program for Fiscal Year 2010

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Fiscal Year (FY) 2010 Rural Housing and Economic Development Program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Valerie Piper, Deputy Assistant Secretary for Economic Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh

Street SW., Room 7136, Washington, DC 20410–7000; telephone number (202) 402–4091 (this is not a toll free number). Hearing- and- speech impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–(800) 877–8339. For general information on this and other HUD programs, call Community Connections at 1-(800) 998–9999 or visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: The Rural Innovation Fund program was authorized by the Consolidated Appropriations Act, 2010, Public Law 111–117. The Rural Innovation Fund NOFA was posted on Grants.gov on December 22, 2010, and announced in the **Federal Register** on January 4, 2011 (76 FR 375). Applications were rated and selected for funding on the basis of selection criteria contained in that NOFA.

The Catalog of Federal Domestic Assistance (CFDA) number for Rural Innovation Fund program is 14.263. The purpose of the Rural Innovation Fund is to provide support for highly targeted and innovative grants dedicated to addressing the problems of concentrated rural housing distress and community poverty for projects that demonstrate a great likelihood of substantial impact in addressing the housing needs and community poverty in the project area. Eligible applicants are local rural nonprofit organizations, community development corporations, federally recognized Indian tribes, state housing finance agencies (HFAs), and state economic development and community development agencies (including consortia of such entities) with demonstrated capacity to undertake comprehensive projects that address the problems of concentrated rural housing distress and community poverty.

The funds made available under this program were awarded competitively, through a NOFA selection process conducted by HUD. Approximately $25 million was made available under the Consolidated Appropriations, 2010, in Rural Innovation grant funds, along with unobligated and unused funds remaining for the Rural Fund's predecessor program, the Rural Housing and Economic Development (RHED) program appropriated by the Department of Housing and Urban Development Appropriations Act, 2009, and prior appropriations Acts. For the Fiscal Year 2010 competition, a total of $31,355,236 was awarded to 51 projects nationwide.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A to this Notice. A description of the projects, activities or undertakings of each award is provided in Appendix B to this Notice.

Dated: January 11, 2012.

Valerie Piper,

Deputy Assistant Secretary for Economic Development.

Appendix A

Number	State	Award recipient	Award
1	AK	Village of Atmautluak	$798,888
2	AK	Organized Village of Kake	567,908
3	AZ	Nogales Community Development Corporation	1,999,177
4	AZ	Elfrida Citizens Alliance, Inc	300,000
5	AZ	San Carlos Housing Authority	300,000
6	AZ	International Sonoran Desert Alliance	300,000
7	AZ	Portable Practical Educational Preparation, Inc.	1,557,840
8	AR	Southern Bancorp Capital Partners	1,998,621
9	CA	Karuk Tribe	392,266
10	CA	Habitat for Humanity Lake County	300,000
11	CA	All Mission Indian Housing Authority	300,000
12	CA	La Jolla Band of Luiseno Indians	300,000
13	CA	Santa Rosa Band of Mission Indians	300,000
14	CA	Cahuilla Band of Indians	300,000
15	CA	Bear River Band of Rohnerville Rancheria	300,000
16	CA	Walking Shield, Inc. of Lake Forest, California	300,000
17	DE	National Council on Agricultural Life & Labor Research Fund of Dover, DE	300,000
18	IL	Youthbuild McLean County	300,000
19	KY	Southeast Kentucky Economic Development Corporation	300,000
20	KY	Young Adult Development in Action, Inc.	300,000
21	KY	Purchase Area Housing Corporation	300,000
22	KY	Housing Development Alliance, Inc.	300,000
23	LA	Macon Ridge Community Development Corporation	300,000
24	LA	Pilgrim Rest Community Development Agency	300,000
25	MI	Keweenaw Bay Indian Community	800,000
26	MI	Keweenaw Bay Ojibwa Housing and Community Walking Development Corporation	300,000
27	MN	Midwest Minnesota Community Development Corporation	300,000
28	MS	Community Students Learning Center	1,974,462
29	MT	Northern Cheyenne Tribal Housing Authority	300,000
30	MT	Salish & Kootenai Housing Authority	300,000
31	MT	Chippewa Cree Tribe	2,000,000
32	NM	Northern Pueblos Housing Authority	300,000
33	NM	San Felipe Pueblo Housing Authority	1,660,000
34	NM	Taos Pueblo	799,997
35	NM	Jicarilla Apache Housing Authority	300,000
36	NY	PathStone Corporation of Rochester, NY	2,000,000
37	NC	Lumbee Regional Development Association	300,000
38	OK	Choctaw Nation of Oklahoma	776,294
39	OK	Housing Authority of the Seminole Nation of Oklahoma	300,000
40	OK	Little Dixie Community Action Agency, Inc.	300,000
41	OR	St. Joseph's Shelter	300,000
42	PR	Instituto para el Desarrollo Socioeconómico y de Vivienda de Puerto Rico, Inc	300,000

Number	State	Award recipient	Award
43	SD	Mazaska Owecaso Otipi Financial, Inc.	300,000
44	SD	Oglala Sioux (Lakota) Housing	2,000,000
45	SD	Four Bands Community Fund, Inc.	300,000
46	SD	Lakota Fund, Inc.	300,000
47	TX	Motivation Education & Training, Inc.	300,000
48	WA	Confederated Tribes of the Colville Reservation	799,750
49	WA	Kalispel Tribe of Indians	240,970
50	WI	Lac Courte Oreilles Band of Lake Superior Chippewa Indians	789,063
51	WI	Ho-Chunk Housing and Community Development Agency	300,000
Total			31,355,236

Appendix B

Alaska

The Atmautluak Traditional Council in Atmautluak, Alaska will receive a Rural Innovation Fund Indian Economic Development and Entrepreneurship grant in the amount of $798,888 to launch the Pikat Housing Development Company Project (Pikat Project), which will address the need for sustainable, permanent jobs by developing energy-efficient, culturally-informed, and healthy housing for low- and very-low income residents in the Village of Atmautluak. The Pikat Project will form the for-profit business Pikat Housing Development Company (PHD COMPANY) to construct two prototype homes that can then be duplicated in Atmautluak and the surrounding villages by PHD Company (PHDC). This will create more job opportunities as PHDC grows. In partnership with the Cold Climate Housing Research Center (CCHRC), the Pikat Project will use a hands-on approach to build the capacity of the tribal government staff and local construction workforce. The tribe has a trained construction workforce with experience in conventional construction techniques but lacks training in green, energy-efficient new construction. Leveraging for this project is $507,202 from CCHRC and Atmautluak Limited.

Contact Person: Mr. Daniel Waska.

Grantee Address: Village of Atmautluak, PO Box 6568, Atmautluak, AK 99559–6568.

Telephone Number: (907) 553–5610.

Email Address: *atmautluaktc@hughes.net.*

The Organized Village of Kake in Kake, Alaska will receive a Rural Innovation Fund Indian Economic Development and Entrepreneurship grant in the amount of $567,908 that will be used to provide small business development assistance to start-up oyster and geoduck farmers. Shellfish aquaculture shows strong promise to provide expanded private sector employment and revenue to rural Southeast Alaska, which has been devastated in recent years with outmigration of jobs and residents. The Southeast Alaska Mariculture Business Development Project will offer business development technical assistance and capacity building services to existing and start-up mariculture businesses in the Kake, Naukati, Hoonah and Angoon areas. All of these communities are located in economically distressed rural areas with less than 2,500 inhabitants. Services include a shellfish business incubator, mariculture small farmer apprenticeship program, and a mariculture equipment revolving loan fund for provision of essential equipment to create small shellfish farms. Key partners for the project include AK Shellfish Growers Assoc.; Univ. of Southeast AK Marine Advisory Program; Univ. of AK Center for Economic Development; AK Oyster Cooperative and Rural Community Assistance Corp. Leveraging for this project is $224,741.

Contact Person: Mr. Gary Williams.

Grantee Address: Organized Village of Kake, P.O. Box 316, Kake, AK 99830–0316.

Telephone Number: (907) 785–6471.

Email Address: *GEWilliams@KakeFirstNations.org.*

Arizona

Nogales Community Development (NCD) in Nogales, Arizona will receive a Rural Innovation Fund Comprehensive grant in the amount of $1,999,177 to revitalize the downtown core of the rural colonia while helping low-income residents build assets to move out of poverty. These goals will be achieved through three primary activities. First, NCD will develop a multi-use training and resource center to provide residents with self-sufficiency services and spur revitalization of historic downtown buildings. Second, NCD will provide services including rental housing rehab, foreclosure mitigation, housing counseling and financial literacy, business development, and education, including scholarships for higher education. Other self sufficiency supports include citizenship classes, developing community gardens, public health education, and access to transportation and child care. Third, NCD will create a comprehensive continuum of services referral system that bundles client housing, business, public health and education services with a program that trains and deploys lay community workers to link residents with services. This project will create at least 100 jobs and rehabilitate 10 housing units. NCD will partner with Mariposa Community Health Center, University of Arizona (Santa Cruz County), Santa Cruz County Provisional Community College Board, Southwest Fair Housing Council, Primeria Alta Historical Society, Nogales Public Housing Authority, and Citi Bank. Leveraging for this project is $1,000,743.

Contact Person: Ms. Yvonne Delgadillo.

Grantee Address: 124 North Terrace Avenue, Suite B, Nogales, AZ 85621–3248.

Telephone Number: (520) 287–3631.

Email Address: bbracker@mchsi.com.

Elfrida Citizens Alliance, Inc (ECA) in Elfrida, Arizona will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to address substandard housing conditions, economic distress and lack of access to affordable capital by promoting sustainable energy-efficient housing, businesses, and community facilities. ECA will provide technical assistance to small businesses and homeowners to develop, finance, and build energy-efficiency projects or renewable energy facilities and leverage funds from utility rebates and USDA's Renewable Energy America Program. ECA will construct 14 commercial projects, replace 3 substandard homes, and provide training in installation of solar photovoltaic panels. Permanent financing secured by businesses and homeowners will repay the RIF construction loans, which will capitalize a revolving loan fund to provide construction financing for small businesses to develop and build renewable energy facilities or to make

energy-efficiency improvements, affordable financing for businesses, and construction loans to upgrade substandard homes. Partners include Sulphur Springs Valley Electric Cooperative and Southeastern Arizona Governments Organization's Pathways Out of Poverty Program. Leveraging for this project is $150,000.

Contact Person: Ms. Jeanne Shaw.

Grantee Address: P.O. Box 172, Elfrida, AZ 85610–0172.

Contact Number: (520) 642–6967.

Email Address: eca_elfrida@vtc.net.

The San Carlos Housing Authority in Peridot, Arizona will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to build and rehabilitate 40 single family homes and provide quality affordable rental housing. Each of the new and rehabilitated homes will have cost-saving, energy-efficient upgrades, including Energy Star advanced lighting, energy-efficient hot water distribution system, high efficiency HVAC system, and Energy Star high performance windows, design shading, and radiant barriers. Partners for this project are Travois, Inc, and Travois Asset Management, LLC. Leveraging for this project is $150,000.

Contact Person: Mr. Thomas Pender.

Grantee Address: Highway 70 and Moonbase Road, Peridot, AZ 85542–0000.

Telephone Number: (928) 300–8814.

Email Address: tomp@pender-engineering.com or *tom@pender-engineer.com.*

The International Sonoran Desert Alliance (ISDA) in Ajo, Arizona will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to complete the final phase of the Curley School renovation project. In 2005, ISDA purchased a seven acre, seven building campus and renovated the high school and junior high school buildings into 30 affordable artisan live/work spaces. This project will convert an elementary school into a conference and learning center with bed/bath units to augment the available guest rooms and generate income to sustain the learning center. ISDA will run a construction training program for adults and youth that will create 15–20 jobs. Leveraging for this project is $150,000.

Contact Person: Ms. Tracy Taft.

Grantee Address: 401 W Esperanza Ave, Ajo, AZ, 85321–2405.

Telephone Number: (520) 387–3229.

Email Address: tract@isdanet.org

The Portable Practical Education Preparation Inc (PPEP) in Tucson, AZ, will receive a Rural Innovation Fund Comprehensive grant in the amount of $1,557,840 to increase job training and work skills for low income residents in Southern Yuma County, AZ. The project is called *Building Houses, Building Community* and it will provide 66 low income youth, the majority farm workers, job skills and education to positively impact the economy of these rural communities in tandem with the creation of 9 homes and rehabilitation of 15 homes for low income people. Partners include PPEP's High School Equivalency Program (HEP), OneStop, Workforce Investment Act (WIA) program, WIA Section 167 Migrant and Seasonal Farmworker program, and two charter schools serving high risk youth in Somerton and San Luis, AZ. Leveraging for this project is $883,800.

Contact Person: Ms. Kari Hogan.

Grantee Address: 802 E. 46th Street, Tucson, AZ 85713–5006.

Telephone Number: (520) 770–2500.

Email Address: KHOGAN@ppep.org.

Arkansas

The Southern Bancorp Capital Partners (SBCP) in Arkadelphia, Arkansas, will receive a Rural Innovation Fund Comprehensive grant in the amount of $1,998,621 for an economic development and housing program that will support existing business and entrepreneurs and provide supportive services and incentives to homeowners. Activities include: a new downtown Helena-West Helena mixed-use retail and housing development; a loan loss reserve and business loan fund; employer incentives for job creation; a small business incubator; an innovative business plan award competition; individual development accounts; housing counseling and financial education; and housing assistance stipends for low-income families and those in critical professions. The program will create 14 new businesses, 98 new jobs, and help 155 homeowners purchase or repair their homes. Partners include Southern Bancorp, Southern Good Faith Fund; Phillips Community College-University of Arkansas, Small Business Incubator; the Phillips County Chamber of Commerce; Helena-West Helena Advertising and Promotions Commission; and Main Street Helena. Leveraging for this project is $1.1 million.

Contact Person: Ms. Tanya Wright.

Grantee Address: 605 Main Street, Suite 602, Arkadelphia, AR 71923–6037.

Telephone Number: (510) 372–4201, ext. 33 or 30.

Email Address: twright@banksouthern.com.

California

The Karuk Tribe, through its Karuk Community Development Corporation (KCDC), in Happy Camp, California will receive a Rural Innovation Fund Indian Economic Development and Entrepreneurship grant in the amount of $392,266 to provide job training, small business assistance, and financial education to residents. KCDC will provide vocational and job training programs for 90 residents; credit, homeownership, and financial counseling for 60 residents; and entrepreneurship training for 60 residents or 10 new businesses. A computer center will allow residents to obtain GEDs, certificates, or Associate degrees via distance learning. KCDC will partner with Happy Camp School District and the Karuk Community Loan Fund. Leveraging for this project is $114,191.

Contact Person: Ms. Laura Olivas.

Grantee Address: Karuk Tribe, 64236 Second Ave/PO Box 1016, Happy Camp, CA 96039–0000.

Telephone Number: (530) 493–5376.

Email Address: lolivas@karuk.us.

Habitat for Humanity Lake County in Lower Lake, California will receive a Rural Innovation Fund Single Purpose Grant in the amount of $300,000 to repair and renovate 30 homes as part of its Jobs-for-Homes Project. This project will hire local displaced workers and will train them in energy efficiency, sustainability, and home accessibility. The home repair and rehabilitation will both improve the health and safety of the occupants and ensure the home's long-term affordability. The Local Workforce Investment Board One Stop Career Center will assist in the training of the new hires. Leveraging for this project is $170,000.

Contact Person: Mr. Richard Birk.

Grantee Address: P.O. Box 1830, Lower Lake, CA 95457–9906.

Contact Number: (707) 994–1100.

Email Address: richardb@lakehabitat.org.

All Mission Indian Housing Authority (AMIHA) in Temecula, California will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to fund construction of four homes on the Torres Martinez Indian Reservation. This project is an important step in the plan to replace all of the 32 dilapidated modular homes inhabited by the majority of Tribal residents. The four new, stick-built, 3–4 bedroom, 2 bathroom homes will range from 1,200 to 1,300 square feet and will be of quality construction. Each home will meet Energy Star standards and meet or exceed mandatory items on the ''Green

Communities Criteria'' set forth by Enterprise Community Partners, Inc. AMIHA will partner with Santa Ynex Band of Chumash Indians. Leveraging for this project is $373,732.

Contact Person: Ms. Debra M. Skallerud.

Grantee Address: 27740 Jefferson Ave, Suite 260, Temecula, CA 92590–2607.

Telephone Number: (951) 760–7390.

Email Address: dskallerud@amiha.org.

The La Jolla Band of Luiseno Indians (LJBLI) in Pauma Valley, California will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to construct two new healthy design homes on the La Jolla Indian Reservation. LJBLI will partner with All Mission Indian Housing Authority (AMIHA) which is a tribally designated housing entity. Leveraging for this project is $204,880.

Contact Person: Ms. Debra M. Skallerud.

Grantee Address: 22000 Hwy 76, Pauma Valley, CA 92061–9721.

Telephone Number: (951) 760–7390.

Email Address: dskallerud@amiha.org.

Santa Rosa Band of Mission Indians in Hemet, California will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to fund construction of two new homes on the Santa Rosa Reservation. The two new, stick-built, 3–4 bedroom, two bathrooms homes will range from 1,600–2,000 square feet and will incorporate visibility features and healthy design. All homes will meet Energy Star standards and will be constructed to meet or exceed mandatory items on the ''Green Communities Criteria.'' Partners for this project include AMERID Risk Management Corporation, The LaJolla Band of Luiseno Indians and Pit River Construction, Inc. Leveraging for this project is $204,880.

Contact Person: Ms. Debra M. Skallerud.

Grantee Address: P.O. Box 609, Hemet, CA 92546–0609.

Telephone Number: (951) 760–7390.

Email Address: dskallerud@ amiha.org.

The Cahuilla Band of Indians in Anza, California, will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to build two new affordable homes in partnership with All Mission Indian Housing Authority (AMIHA). The two stick-built, 3–4 bedroom, 2 bathroom homes will be of quality construction and incorporate climate resilient features. The homes will incorporate visitability features and healthy design. Each home will meet the seven principles of universal design identified by the Universal Design Alliance. All homes will meet Energy Star standards and will meet or exceed mandatory items on the ''Green Communities Criteria'' set forth by Enterprise Community Partners, Inc. Leveraging for this project is $233,880.00.

Contact Person: Ms. Debra M. Skallerud.

Grantee Address: P. O. Box 391760, 52701 Hwy 371, Anza, CA 92539–1760.

Telephone Number: (951) 760–7390.

Email Address: dskallerud@amiha.org.

The Bear River Band of Rohnerville Rancheria in Loeita, California will receive a Rural Innovation Fund Singe Purpose Grant in the amount of $300,000 to develop infrastructure improvements on a 113-acre Tribal property in Singley Hill, Humboldt County, California. The infrastructure improvements include construction of roadways, walkways, dry utilities, storm water, wastewater, and water supply systems to support the multi-family housing element of the master-planned Tish Non development, a mixed-use residential, community, and commercial project. The anticipated full development at the Tish Non Village includes 66 single-family home sites, 12 multi-family units and a community center, recreation center, and assisted living center. Leveraging for this project is $150,235.

Contact Person: Mr. Bruce Merson.

Grantee Address: 27 Bear River Drive, Loleta, CA 95551–9646.

Telephone Number: (707) 407–6617.

Email Address: bruce.merson@ bearrivercasino.com.

Walking Shield, Inc. in Lake Forest, California will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 for an affordable housing and economic development project on the Rocky Boy Indian reservation in Montana. The innovative housing and community development project will locate and redirect surplus military houses on the Malmstrom Air Force Base to this underserved, rural American Indian community that has a shortage of affordable housing. This project also includes infrastructure improvements and healthcare activities. The project will result in the relocation of 75 homes, the creation of 15 new jobs, the construction of 3 miles of roads and healthcare support for approximately 1,500 individuals. Walking Shield will partner with the Chippewa Cree Housing Authority and Malmstrom Air Force Base. Leveraging for this project is approximately $6,750,000.

Contact Person: Dr. John Castillo.

Grantee Address: 22622 Lambert Street, Ste. 303, Lake Forest, CA 92630–1609.

Telephone Number: (949) 639–0472.

Email Address: jcastillo@walking shield.org.

Illinois

Youthbuild McLean County (YBMC, Inc.) in Normal, Illinois will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to address the need for safe, sustainable, affordable housing in the community of Carlock, Illinois. The plan includes developing a 57-acre, mixed-income subdivision through the ''Self-Help'' (sweat equity) method. Eight affordable, single-family homes will be constructed with Energy Star and LEED certification and three dilapidated homes will be deconstructed and rebuilt as safe, green affordable housing. Partners include USDA Rural Development. Leveraging for this project is $284,000.

Contact Person: Ms. Suzanne Fitzgerald.

Grantee Address: 360 Wylie Drive, Suite #360, Normal, IL 61761–5500.

Telephone Number: (309) 261–6348.

Email Address: sfitzgerad@youthbuild mcleancounty.org.

Kentucky

The Southeast Kentucky Economic Development Corporation (SKED) in Somerset, Kentucky will receive a Rural Innovation Fund Single Purpose Grant in the amount of $300,000 to spur job creation in Annville, Jackson County, Kentucky. SKED will make a third-party loan to Highlands Diversified Services (HDS) for equipment and working capital to expand into a new manufacturing facility. This will create specialized manufacturing jobs that will be filled by low-and-moderate income persons who have the required technical skills but are unemployed as a result of the closure of several companies due to offshore outsourcing. Jackson County is designated as a Distressed County by the Appalachian Regional Commission and is located in the Kentucky Highlands Empowerment Zone. The Empowerment Zone will provide leveraging in the amount of $600,000 which will be used for equipment, inventory, and working capital.

Contact Person: Mr. Greg Jones.

Grantee Address: 2292 South Highway 27, Suite 340, Somerset, KY 42501–2905.

Telephone Number: (606) 677–6100.

Email Address: gjones@centertech.com.

Young Adult Development in Action, Inc. (YADA), d.b.a. YouthBuild Hazard in Louisville, Kentucky will receive a

Rural Innovation Fund Single Purpose grant in the amount $300,000 to support a 12-month, intensive job training and placement program for a minimum of 10 low-income, at-risk young people aged 18 to 24, youth who otherwise face slim job prospects and a likelihood of requiring on-going public assistance. Participants will improve educational credentials, learn and apply marketable green-building skills through affordable housing rehabilitation and construction, and obtain life-long leadership skills. The new affordable housing built will be energy efficient. The program will serve eligible low-and very-low income young people who live in Breathitt County. Partners include more than a dozen local, state and national partners. Funding will enable YouthBuild Hazard to build on the outcomes of previous RHED grants. Leveraging for this project is $787,956.

Contact Person: Ms. Della Howard.

Grantee Address: P.O. Box 638 Louisville, KY 40201–0638.

Telephone Number: (606) 693–9393.

Email Address: director@ youthbuildhazard.org.

Purchase Area Housing Corporation in Mayfield, Kentucky will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to repair and construct affordable homes in Fulton County, Hickman County and the cities of Mayfield and Murray. The project will rehabilitate nine substandard, dilapidated homes that house low-income families and will train Area Technology Center students as part of this effort. The project will provide jobs for contractors, suppliers, and other workers in the Purchase Area. Partners include Area Technology Centers and the Kentucky Housing Corporation. Leveraging for this project is $945,350.

Contact Person: Mr. David Hargrove.

Grantee Address: 1002 Medical Dr., Mayfield, KY 42066–0588.

Telephone Number: (270) 251–6158.

Email Address: david.hargrove@ purchaseadd.org.

Housing Development Alliance, Inc. (HDA) in Hazard, Kentucky will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to build upon HDA's innovative homeownership program. The program will construct 25 homes that are at least 40 percent more energy efficient than a standard code home as documented by the HERS rating. The homes will have a 19 SEER heat pump; conditioned crawl spaces; Energy Star rated vent fans; a heat pump and water heater and will be air-sealed. Partners include the Federal Home Loan Bank, Kentucky Housing Corporation, Federation of Appalachian Housing Enterprises, and local banks. Leveraging for this project is $3,361,283.

Contact Person: Mr. Russell Scott.

Grantee Address: P.O. Box 7284, Hazard, KY 41702–7284.

Telephone Number: (606) 436–0497.

Email Address: scott@ housingdevelopmentalliance.org.

Louisiana

Macon Ridge Community Development Corporation in Ferriday, Louisiana will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to encourage retail growth and create construction jobs as part of the Louisiana Delta Rural Innovation Program. The program will construct ten new, single-family houses in the first 24 months and will stimulate entrepreneurship by utilizing disadvantaged start-up subcontractors. The program will also support a revolving loan fund and homebuyer education program to increase homeownership to low- and moderate-income families in the Lower Mississippi Delta Region. Fifty jobs will be created and retained through this program. Partners include the Louisiana Housing and Community Development Corporation and LISC. Leveraging for this project is $1,415,100.

Contact Person: Mr. Lloyd S. Spillers Jr.

Grantee Address: 1600 Third Street. Ferriday, LA 71334–2281.

Telephone Number: (318) 757–2361.

Email Address: bspillers@mrcdc.com.

The Pilgrim Rest Community Development Agency in Belle Chasse, Louisiana will receive a Rural Innovation Fund Single Purpose Grant in the amount of $300,000 to build a rental housing development for low-to-moderate income residents in Port Sulphur, Plaquemines Parish, Louisiana. The development will be a triplex rental housing building that is environmentally friendly, energy efficient, promotes the use of green products, and adheres to the Enterprise Green Communities ''Healthy Living Environment.'' The project will create 10 construction jobs. Leveraging for this project is $176,000.

Contact Person: Mr. Ronald Singleton.

Grantee Address: 1112 Engineers Road, Belle Chasse, LA 70037–3131.

Telephone Number: (504) 394–1123.

Email Address: pilgrimrestcommu@ bellsouth.net.

Michigan

The Keweenaw Bay Ojibwa Housing and Community Development Corporation (KBOHCDC) in Baraga, Michigan will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to provide business support to Tribal member-owned small businesses through the capitalization of a low-interest revolving loan fund together with business and financial education. The project will service 18 businesses with an average loan of $17,198 and the maximum loan amount of $20,000. KBOHCDC will partner with the Keweenaw Bay Ojibwa Housing Authority. Leveraging for this project is $150,068.13.

Contact Person: Mr. Edward Edwards.

Grantee Address: 220 Main Avenue, Suite 26, Baraga, MI 49908–9618.

Telephone Number: (906) 353–7117.

Email Address: eddy@kboha.com.

The Keweenaw Bay Indian Community in Baraga, MI, will receive a Rural Innovation Fund Indian Economic Development and Entrepreneurship grant in the amount of $800,000 to increase job opportunities and business development for the Tribal community. The economic development project will create jobs through business development and expansion to demonstrate a measurable improvement in the quality of life. Business planning and development efforts will focus on the creation of for profit entities that principally create or retain jobs for tribal members, especially unemployed or underemployed persons. Partners include Tribal Employment Rights Office for training of potential management and employees, Lance Morgan, CEO of HoChunk, Inc., Ojibwa Community College, Keweenaw Economic Development Alliance, and Michigan Tech University. Leveraging for this project is $800,000.

Contact Person: Mr. Gregg Nominelli.

Grantee Address: 16429 Beartown Road Baraga, MI 49908–9210.

Telephone Number: (906) 353–4133.

Email Address: Gregg@kbic-nsn.gov.

Minnesota

Midwest Minnesota Community Development Corporation (MMCDC) in Detroit Lakes, Minnesota will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to provide business financing to a subsidiary limited liability company to redevelop an abandoned commercial facility for the production of biomass heating pellets, capitalizing on the area's supply of wood and logging residue. Transportation and workforce support programs will link low-skilled tribal workers on the White Earth Indian Reservation to jobs in the biomass energy industry. MMCDC will work with the business and White Earth Tribal Employment and Training program to facilitate employment referrals and on-the-job training and

support for new production and office jobs at the plant. MMCDC will work with White Earth Investment Initiative on implementing an IDA program for car ownership. Finally, MMCDC will research the market for biomass pellets and document this research in a market study to support long-term business stability and job growth and diversification. Leveraging for this project is $303,000.

Contact Person: Ms. Janie Erickson.

Grantee Address: 119 Graystone Plaza Suite 100, Detroit Lakes, MN 56501–3034.

Telephone Number: 218–847–319.

Email Address: jerickson@mmcdc.com.

Mississippi

The Community Students Learning Center (CSLC) in Lexington, Mississippi will receive a Rural Innovation Fund Comprehensive grant in the amount of $1,974,462 for the Empowering the Delta with a Growing Economy (EDGE) project. EDGE will partner with community, business and government agencies to implement a multifaceted approach that generates jobs and provides job training, housing counseling, housing and entrepreneurism. By the end of the third year, 100 consumers will participate in job training and mentoring, 10 consumers in business incubation and 100 consumers in life skills. In the area of housing, 100 consumers will receive housing counseling, 500 will receive fair housing information and 40 will receive information with regard to housing. CSLC will partner with Jackson State University, MS Delta Win Center, Bank Plus, Clark & Clark, PLLC, Mississippi Valley State University, KSBC Transportation, Holmes County USDA Service Center and Holmes County Board of Supervisors. Leveraging for this project is $1,248,340.

Contact Person: Ms. Kathy Jenkins.

Grantee Address: 333 Yazoo Street, Lexington, MS 39095–3608.

Telephone Number: (417) 682–6002.

Email Address: dj@ipa.net.

Montana

Northern Cheyenne Tribal Housing Authority (NCTHA) in Lame Deer, MT will receive a Rural Innovation Fund Single Purpose grant in the amount $300,000 to rehabilitate 21 houses, bringing them up to NCTHA standards for safety, energy efficiency, and accessibility. These efforts will result in a 10 percent reduction in substandard housing for the community. The project will create two jobs and provide on-the-job training. In addition to improving the safety and comfort of low-income tribal members, the rehabilitated homes will increase in value, allowing homeowners more flexibility to leverage equity. Leveraging for this project is $465,904.

Contact Person: Mr. Lafe Haugen.

Grantee Address: P.O. Box 327, Lame Deer, MT 59043–0327.

Telephone Number: (406) 477–6419.

Email Address: lafehaugen@gmail.com.

The Salish & Kootenai Housing Authority (SKHA) in Pablo, Montana will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 for a homeownership assistance project on the Flathead Indian Reservation, home of the Confederated Salish & Kootenai Tribes. SKHA will purchase foreclosed properties that can then be re-sold at prices the program participants can afford. The project will also provide homebuyer education, credit counseling, financial assistance and affordable housing options. Leveraging for this project is $205,471.

Contact Person: Mr. Jason Adams.

Grantee Address: P.O. Box 38, Pablo, MT 59855–0038.

Telephone Number: (406) 675–4491.

Email Address: jadams@skha.org.

Chippewa Cree Tribe in Box Elder, Montana will receive a Rural Innovation Fund Comprehensive grant in the amount of $2,000,000 to construct a water storage and delivery system which will provide potable water and fire suppression to the community (justice center, health clinic and approximately 200 homes). This project will result in the creation of 21 jobs. Leveraging for this project is $1,349,944.

Contact Person: Mr. Raymond J. Parker.

Grantee Address: 96 Clinic Road, Box Elder, MT 59521–0000.

Telephone Number: (406) 395–5705.

Email Address: jake@cct.rockyboy.org.

New Mexico

Northern Pueblos Housing Authority (NPHA) in Santa Fe, New Mexico will receive a Rural Innovation Fund Single Purpose grant in the amount $300,000 to reduce the dilapidated housing conditions and overcrowding on Picuris Pueblo by rehabilitating four homes. The rehabilitation of the historic adobe homes will include accessibility improvements, universal design features, and will meet New Mexico Mortgage Finance Authority's Green Building standards. NPHA will also address the high rate of poverty and lack of high-paying employment through job training programs that will be implemented with the assistance of regional entities. In addition to construction job opportunities made available during the home rehabilitation, NPHA will mentor two Tribal members in project and construction management. NPHA will work with the New Mexico Behavioral Health Collaborative to improve access to behavioral and health services for tribal members. Leveraging for this project is $160,644.

Contact Person: Mr. Terry G. Hudson.

Grantee Address: 5 West Guiterrez St. Suite 10, Santa Fe, NM 87506–0956.

Telephone Number: (505) 455–7973.

Email Address: h_terryg@hotmail.com.

The San Felipe Pueblo Housing Authority (SFPHA) in San Felipe Pueblo, New Mexico will receive a Rural Innovation Fund Comprehensive grant in the amount of $1,660,000 to build 12 affordable units of housing while creating 30 jobs. The project will increase the quality of life for over 115 Tribal members living in substandard conditions. Partners include the Pueblo of San Felipe tribal council, the Tribal Administration, Pueblo of San Felipe Public Improvement Authority and the SFPHA Board of Commissioners and Tribal Departments. Leveraging for this project is $9 million.

Contact Person: Mr. Isaac Perez.

Grantee Address: P. O. Box 4222, San Felipe Pueblo, NM 87001–4222.

Telephone Number: (505) 771–9291.

Email Address: iperez@sfpha.org.

Taos Pueblo in Taos, New Mexico will receive a Rural Innovation Fund Indian Economic Development and Entrepreneurship grant in the amount $799,997. The Taos Pueblo Preservation Project (TPPP) will start a nine-year mission to rehabilitate 320 housing units. Within the spectrum of the Rural Innovation Funding, the Taos Pueblo will rehabilitate 52 traditional multi-use spaces in the Old Village that will be used as housing, retail space, and traditional cultural activities. These efforts will also provide education and training for tribe members and facilitate branding and marketing of Pueblo products. Partners for the project include several public and private entities, Taos Pueblo War Chief's Office, Taos Pueblo Cultural Preservation Office, Red Willows Community Grown Cooperative, and the New Mexico Small Business Development Center. Leveraging for this project is $625,104.

Contact Person: Mr. Louis Zamora.

Grantee Address: Taos Pueblo, Post Office 1846, Taos, NM 87571–1846.

Telephone Number: (575) 776–7446.

Email Address: preservation@taospueblo.com.

The Jicarilla Apache Housing Authority in Rio Arriba, New Mexico, will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to improve the housing conditions and utility burden for Jicarilla Apache Tribal members in Dulce, New Mexico. The project will provide housing rehabilitation services and Energy$mart resources to 38 low-income Tribal members and their families. By providing these services, JAHA will build a long-term capacity, through training and education, to assess and address the need for energy-efficiency measures that will augment its increased efforts to preserve the Jicarilla Apache Nation's housing stock and keep housing affordable for the low-income residents of the community of Dulce. Partners include the Native American Housing Consultants, LLC (NAHC), Energy$mart Program of the New Mexico Mortgage Finance Authority (NMMFA), and the Los Amigos Educational Resource Center (LAERC). Leveraging for this project is $404,900.

Contact Person: Mrs. Lisa M. Manwell.

Grantee Address: P.O. box 486 Dulce, NM 87528–0000.

Telephone Number: (575) 759–3459.

Email Address: lgmanwell@hotmail.com.

North Carolina

The Lumbee Regional Development Association (LRDA) in Pembroke, North Carolina, will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to improve the living and economic conditions for the Lumbee Indian Tribe in Robeson, Scotland, and Hoke counties in Southeastern North Carolina. The project will increase energy efficiency and decrease utility costs for residents while creating 9 jobs, completing 150 energy audits and rehabilitating 51 homes. It will also provide housing counseling to 80 families. Partners include the Lumbee River Electric Membership Corporation, Lumbee Enterprise Development, the Robeson County Community Development Corporation, the Lumbee Tribe of North Carolina, and the LRDA Workforce Investment Act program. Leveraging for this project is $497,000.

Contact Person: Mr. James Hardin.

Grantee Address: 636 Prospect Road, Pembroke, NC 28372–0068.

Telephone Number: (910) 521–8602.

Email Address: jhardin@lumbee.org.

Oklahoma

The Little Dixie Community Action Agency, Inc. (LDCAA), in Hugo, Oklahoma will receive a Rural Innovation Fund Single Purpose grant in the amount $300,000 to improve housing and existing economic conditions. LDCAA will complete a needs assessment in the areas of housing and employment to generate action plans relative to the needs identified. Activities will include credit and housing counseling, small business training, job-skills training, job fairs, links to available resources, computer skills training, and education. Staff will coordinate with area employers, representatives of the educational community, and other resource providers to schedule and provide trainings, seminars, and workshops. This project will serve 130 participants. Leveraging for this project is $163,200.

Contact Person: Mrs. Rhonda Teague.

Grantee Address: 209 North 4th St, Hugo, OK 74743–3809.

Telephone Number: (580) 326–3351.

Email Address: rteague@littledixie.org.

The Choctaw Nation of Oklahoma in Durant, Oklahoma will receive a Rural Innovation Fund Indian Economic Development and Entrepreneurship grant in the amount of $776,294 to initiate the Choctaw Native American Business Resource (NABR) Project, which will provide culturally relevant economic development services that support Native American business development, job creation, and ongoing entrepreneur activities. The applicant will partner with Eastern Oklahoma State College (EOSC) and Rural Enterprises Inc. (REI). EOSC will assist with the outreach and infrastructure necessary to implement the project and will also provide educational activities. REI will ensure collaboration with the Native American Small Business Center, provide access for Choctaw NABR participants to a $500,000 revolving loan fund it operates, and provide small business resources and educational activities. Leveraging for this project is $670,976.

Contact Person: Ms. Dana Bonham.

Grantee Address: P.O. Box 1210 Durant, OK 74702–1210.

Telephone Number: (580) 924–8280.

Email Address: grants@choctawnation.com.

The Housing Authority of the Seminole Nation of Oklahoma (HASNOK) in Wewoka, Oklahoma will receive a Rural Innovation Fund Single Purpose Grant in the amount of $300,000 to provide energy-efficient upgrades in an affordable rental housing development under construction in the tribal community in Seminole County, Oklahoma. HASNOK is building 25 single-family homes that will be models for sustainable, healthy, and energy efficient design. All of the newly-constructed homes will have cost-saving energy efficient upgrades including Energy Star lighting, appliances, windows and doors, water heaters, and heating and cooling systems. Leveraging for this grant is $150,000; project also includes $4,448,958 of other financing.

Contact Person: Mr. Tom McGeisey.

Grantee Address: Wewoka, OK 74884–2424.

Telephone Number: (405) 257–6604.

Email Address: executivedirector@hasnok.org or *tmcgeisey@netscape.net.*

Oregon

The St. Joseph's Shelter in Mt. Angel, OR will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to increase job opportunities and business development for the Tribal community. The grant funds will go toward the renovation of a two story building that will house migrant farmworker families in rural Oregon. The partner for this project is CASA of Oregon. Leveraging for this project is $601,445.

Contact Person: Mrs. Lisa Rogers.

Grantee Address: 925 S. Main Street, Mt. Angel, OR.

Telephone Number: (503) 537–0319 x306.

Email Address: lrogers@casaoforegon.com.

Puerto Rico

Instituto para el Desarrollo Socioeconómico y de Vivienda de Puerto Rico, Inc. (INDESOVI) in Mayaguez, Puerto Rico will receive a Rural Innovation Fund Single Purpose Grant in the amount of $300,000 to build a mixed-use development in the Municipality of Coamo. The project includes construction of eight affordable rental units with ground floor commercial space. The rental units will be occupied by low-income families. The project will be energy efficient and incorporate Green and Healthy Design and will also provide an estimated 4 permanent jobs and 10 construction jobs. The Municipality of Coamo is partnering with INDESOVI and will donate the land for the project as well as contributing to the initial planning. Leverage for this project is $94,763.

Contact Person: Mr. Juan Enrique Sabathie.

Grantee Address: 173 Post Street, P.O. Box 7154, Mayaguez, PR 00681–7154549.

Telephone Number: (787) 832–7654.

Email Address: indesovi@gmil.com or *sabathie@prtc.net.*

PathStone Corporation in Rochester, New York will receive a Rural

Innovation Fund Comprehensive grant in the amount of $2,000,000 for a project in the Castañer Region of the Cordillera Central on the western portion of Puerto Rico. The project will provide training and employment services for workers, training and resources for growers, and financial and technical assistance for microenterprise and small business development. PathStone will work with local organizations around the agro-tourism industry and promote the creation of affordable housing. Partners include Pontifical Catholic University Puerto Rico, Enterprise Community Partners, U.S. Dept. of Labor, Neighbor Works America, National Council of LaRaza and Popular Mortgage. Leveraging for this project is $1,589,759.

Contact Person: Mr. Lee Beaulac.

Grantee Address: 400 East Avenue, Rochester, NY 14607–1910.

Telephone Number: (585) 340–3366.

Email Address: *lbeaulac@pathstone.org.*

South Dakota

The Mazaska Owecaso Otipi Financial, Inc. in Pine Ridge, South Dakota will receive a Rural Innovation Fund Grant Single Purpose grant in the amount of $300,000 to prepare residents for first-time homeownership and to replenish loan funds to meet increased demand. A full-time homeownership counselor will provide group training and one-on-one counseling to potential homebuyers and applicants. The goals for this project are to have 64 families that complete homebuyer training and/or individual homeownership counseling; 10 families that receive a fixed-rate mortgage to purchase their first home; and 5 families that make energy efficient upgrades to their new home at the time of purchase. Leveraging for this project is $150,000.

Contact Person: Ms. Colleen Steele.

Grantee Address: P.O. Box 1996, Pine Ridge, SD 57770–000.

Telephone Number: (605) 867–1018.

Email Address: *cstelle.moof@yahoo.com.*

The Oglala Sioux (Lakota) Housing in Pine Ridge, South Dakota will receive a Rural Innovation Fund Comprehensive grant in the amount of $2,000,000 to design and build 16 affordable rental and owner-occupied houses on the Pine Ridge Indian Reservation in southwestern South Dakota. The project aims to assist tenants with lower costs by building energy-efficient, low-maintenance, secure homes that use the latest technology. The organization will train workers and contractors as Energy Auditors and Weatherization Installers as well as giving them an introduction to green building methods. Partners include Thunder Valley CDC Sustainable Communities Project, Indian Health Service, OST Rural Water System, Oglala Lakota College, Bureau of Indian Affairs, OST Partnership for Housing, Pine Ridge Area Chamber of Commerce, The Lakota Fund, and Native Workplace/CleanEdision. Leveraging for this project is $1,000,000.

Contact Person: Mr. Doyle Pipe on Head.

Grantee Address: 400 East Main, Pine Ridge, SD 57770–0603.

Telephone Number: (605) 867–5161.

Email Address: doyle.poh@oslh.org.

The Four Bands Community Fund, Inc. in Eagle Butte, South Dakota will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to implement a Native American Green Business Development program for underserved Native entrepreneurs. Project activities include a microloan fund to help 20 businesses become ''green,'' diversify into green products or services, and start new green businesses; business sustainability estimates and action plans for loan recipients; energy audits; educational workshops on green business and energy efficiency; business assistance grants for post-loan business management assistance and to subsidize technology costs; and a feasibility study for a green business incubator. The project will be located on the Cheyenne River Reservation in rural north-central South Dakota. Leveraging for this project is $205,000.

Contact Person: Ms. Tanya Marie Fiddler.

Grantee Address: Box 932, 101 South Main Street, Eagle Butte, SD 57625–0932.

Telephone Number: (605) 964–3687.

Email Address: *tfiddler@fourbands.org.*

The Lakota Fund, Inc. in Kyle, South Dakota will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to address housing and poverty issues for the Oglala Sioux Tribe on the Pine Ridge Reservation in South Dakota. The project will accelerate job creation, increase employment and income, and promote healthy living conditions to facilitate a positive cycle toward self-sufficiency for families. Activities include small business workshops and loans, workforce development training, financial education and tax preparation assistance, and other support services. Partners include the Lakota County Times, KILI, Oglala Lakota College, Consumer Credit Counseling, OST Partnership for Housing, Lakota Express, Mazaska Owecaso Otipi Financial Inc, Security First Bank, Wells Fargo Bank, and Attorney David Frankel. Leveraging for this project is $143,720.

Contact Person: Ms. Tawney Brunsch.

Grantee Address: Lakota Trade Center, Suite 201, Kyle, SD 57752–0340.

Telephone Number: (605) 455–2500.

Email Address: *tbrunsch@lakotafunds.org.*

Texas

Motivation Education & Training in New Caney, Texas will receive a Rural Innovation Fund Single Purpose grant in the amount $300,000 to support the Rositas Colonias Farmworker Housing Rehabilitation and Training Project. The project will renovate or replace 10 homes in Maverick County that are owned and occupied by low-income farmworkers and located in disinvested colonias. The project will use green construction techniques and individuals may be able to replace units with energy-efficient manufactured homes. Thirty farmworkers will be trained in construction skills. Partners include Southwest Texas Junior College and the National Farmworker Jobs Program. Leveraging for this project is $153,000.

Contact Person: Mr. Francisco L. Esparza.

Grantee Address: 22551 Gene Campbell Blvd., New Caney, TX 77357–1838.

Telephone Number: (281) 689–5544.

Email Address: esparza@metinc.org.

Virginia

The National Council on Agriculture Life & Labor Research Fund (NCALL) in Dover, Delaware will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to facilitate development of apartment units and homes for first-time homebuyers in Accomack and Northampton Counties on Virginia's Eastern Shore. The project will support the continuation of the area's first homeownership education program, which provides pre-purchase, financial literacy, and foreclosure prevention services. This unique approach to both the supply and demand side of affordable housing in this designated ''difficult to develop'' area will yield practical solutions, project momentum, and provide a successful transition through pre-development, financing, construction, and sales or rent-up. NCALL will partner with the Accomack-Northampton Planning District Commission (A–NPDC) and their Housing Alliance and Housing Authority. Leveraging for this project is $550,000.

Contact Person: Mr. Joe Myer.

Grantee Address: 363 Saulsbury Rd., Dover, DE 19904–2722.

Telephone Number: (302) 678–9400 ext 112.

Email Address: jmyer@ncall.org.

Washington

The Confederated Tribes of the Colville Reservation in Nespleem, Washington will receive a Rural Innovation Fund Indian Economic Development and Entrepreneurship grant in the amount of $799,750 to support the creation of a new woody biomass business entity that will harvest woody biomass and deliver it to local cogeneration facilities where it will be converted into electricity. The new business will add 16 new jobs and expand business opportunities for several contractors. Funds will be used to purchase the heavy equipment needed for turning woody biomass—waste from logging, orchards and mills—into fuel for power generation. The new business will be developed under the guidance of the CCT Energy Department as a for-profit business called *Fuel Enterprises.* Leveraging for this project is $2,300,000.

Contact Person: Mr. Ernie Clark.

Grantee Address: P. O. Box 150, Nespelem, WA 99155–0150.

Telephone Number: (509) 422–7755.

Email Address: Emie.clark@colvillletribes.com.

The Kalispel Tribe of Indians in Usk, Washington will receive a Rural Innovation Fund Indian Economic Development and Entrepreneurship grant in the amount of $240,970 to construct a nursery to cultivate native plants, including over 3,000 trees from locally sourced plant stock. The project will also restore lost habitat on the reservation, fund wetland restoration efforts, and link these efforts with the initiation/development of a forestry apprenticeship. Partners include KNRD, EPA, BPA, and KCTC, as well as in-kind funds for land acreage. Leveraging for this project is $128,456.

Contact Person: Mr. Ray Entz.

Grantee Address: PO Box 39 Usk, WA 99180–0039.

Telephone Number: (509) 447–7278.

Email Address: rentz@kalispeltribe.com.

Wisconsin

The Lac Courte Oreilles Band of Lake Superior Chippewa Indians in Hayward, Wisconsin will receive a Rural Innovation Fund Indian Economic Development and Entrepreneurship grant in the amount of $789,063 to enhance the tourism-based economy by creating a visitor's center, museum, and gift shop located in former Kinnamon School, which will be renovated. The visitor's center will promote tribal businesses and will provide a venue for the work of local crafts and tradespersons. Partners include Sawyer County Historian Andrea Wittwer, Tribal Spiritual Leader and Historic Preservation Officer Jerry Smith, Lac Courte Oreilles (LCO) Arts & Crafts Assoc. Director Cathy Begay, Tribal Governing Board and Tribal Attorney, Paul Shagan, LC Dev Corp, NW Regional Planning Commission, and A&E Consulting Firm. Leveraging for this project is $394,908.

Contact Person: Ms. Lorene Wielgot.

Grantee Address: 13394 West Trepania Rd, Hayward, WI 54843–2186.

Telephone Number: (715) 634–8934.

Email Address: weilot@gmail.com.

The Ho-Chunk Housing and Community Development Agency in Tomah, Wisconsin will receive a Rural Innovation Fund Single Purpose grant in the amount of $300,000 to rehab 21 homes in the 40-year old Indian Mission community, located in Black River Falls, Wisconsin. As part of the Indian Mission Green Rehabilitation project, 21 homes will receive a geothermal heat-pump system and new basement insulation. The green retrofitting will increase energy efficiency and reduce energy costs by 63 percent. Leveraging for this project is $150,000.

Contact Person: Mr. Paul Tysse.

Grantee Address: 1116 E. Monowau Street, P.O. Box 730, Tomah, WI 54660–2332.

Telephone Number: (608) 374–1245.

Email Address: paul.tysse@ho-chunk.com.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2010–N252; FXES11130100000C2–123–FF01E00000]

Endangered and Threatened Wildlife and Plants; Recovery Plan for Hawaiian Waterbirds, Second Revision

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the final approved Recovery Plan for Hawaiian Waterbirds, Second Revision. The recovery plan addresses four endangered bird species. This plan includes recovery objectives and criteria, and specific recovery actions necessary to achieve downlisting and delisting of the species and their removal from the Federal List of Endangered and Threatened Wildlife and Plants.

ADDRESSES: An electronic copy of the recovery plan is available at *http://www.fws.gov/endangered/species/recovery-plans.html* and *http://www.fws.gov/pacific/ecoservices/endangered/recovery/plans.html.* Copies of the recovery plan are also available by request from the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850 (telephone: (808) 792–9400).

FOR FURTHER INFORMATION CONTACT: Annie Marshall, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION: We announce the availability of the approved Recovery Plan for Hawaiian Waterbirds, Second Revision. The recovery plan addresses the following four bird species listed as endangered: Hawaiian duck or koloa maoli (*Anas wyvilliana*), Hawaiian coot or alae keokeo (*Fulica alai*), Hawaiian common moorhen or alae ula (*Gallinula chloropus sandvicensis*), and Hawaiian stilt or aeo (*Himantopus mexicanus knudseni*).

Background

Recovery of endangered or threatened animals and plants is a primary goal of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) and our endangered species program. Recovery means improvement of the status of listed species to the point at which listing is no longer required under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of listed species, establish criteria for downlisting or delisting, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for endangered or threatened species unless such a plan would not promote the conservation of the species. Section 4(f) of the Act requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. A recovery plan for these four waterbirds was first published in 1978, and the first revision of the recovery plan was published in 1985. A draft of the second revision to the recovery plan was made available for public comment from July 9 through September 7, 1999 (64 FR 37148). However, that draft was never finalized. From August 24 through October 24, 2005, we made a second draft of the

second revision available for public comment (70 FR 49668). We have considered information we received from public comments and peer reviewers in our preparation of the recovery plan, and have summarized that information in an appendix of the approved recovery plan. We welcome continuing public comment on this recovery plan, and we will consider all substantive comments on an ongoing basis to inform the implementation of recovery activities and future updates to the recovery plan.

The four species of waterbirds addressed in the recovery plan occurred historically on all of the main Hawaiian Islands except Lanai and Kahoolawe. Currently, Hawaiian ducks are found on the islands of Niihau, Kauai, Oahu, Maui, and Hawaii; Hawaiian coots and Hawaiiian stilts are found on all of the main Hawaiian Islands except Kahoolawe; and Hawaiian common moorhens are found only on the islands of Kauai and Oahu. These species use a variety of wetland habitats, including freshwater marshes and ponds, coastal estuaries and ponds, artificial reservoirs, taro patches, irrigation ditches, sewage treatment ponds, and, in the case of the Hawaiian duck, montane streams and swamplands. Historically, the primary cause of population declines for the endangered Hawaiian waterbirds has been loss of wetland habitat. Other factors that have contributed to waterbird population declines, and which continue to be detrimental, include predation by introduced animals, altered hydrology, grazing, alteration of habitat by invasive nonnative plants, disease, and possibly environmental contaminants. Hunting in the late 1800s and early 1900s took a heavy toll on Hawaiian duck populations and, to a lesser extent, populations of the other three endemic waterbirds. Currently, predation by introduced animals may be the greatest threat to the coot, moorhen, and stilt; hybridization with feral mallards is the most serious threat to the Hawaiian duck.

The recovery of the endangered waterbirds focuses on the following objectives: (1) Increasing population numbers to be consistently stable or increasing, with a minimum of 2,000 birds for each species; (2) establishing multiple, self-sustaining breeding populations throughout each species' historical range; (3) establishing and protecting a network of both core and supporting wetlands that are managed as habitat suitable for waterbirds, including the maintenance of appropriate hydrological conditions and control of invasive nonnative plants; (4) eliminating or controlling the threats posed by introduced predators, avian diseases, and contaminants; and (5) for the Hawaiian duck, removing the threat of hybridization with feral mallards.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 28, 2011.

Richard R. Hannan,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 2012–926 Filed 1–18–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2011–N241; FXRS12650400000S3–123–FF04R02000]

Establishment of Everglades Headwaters National Wildlife Refuge and Conservation Area

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Director of the U.S. Fish and Wildlife Service (Service) has approved the establishment of the Everglades Headwaters National Wildlife Refuge and Conservation Area in Polk, Osceola, Highlands, and Okeechobee Counties, Florida. The Service establishes the Refuge and Conservation Area in order to support a connected conservation landscape; to provide quality habitats for native wildlife diversity and at-risk species; to enhance water quality, quantity, and storage; and to provide opportunities for wildlife-dependent recreation.

DATES: This action was effective on December 16, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Cheri M. Ehrhardt, Natural Resource Planner, at (321) 861–2368 (telephone) or Mr. Charlie Pelizza, Refuge Manager, at (772) 562–3909, extension 244 (telephone).

SUPPLEMENTARY INFORMATION: The establishment of the Everglades Headwaters National Wildlife Refuge and Conservation Area will protect approximately 150,000 acres in central and south Florida, helping to protect and restore one of the great grassland and savanna landscapes of eastern North America, conserving one of the nation's prime areas of biological diversity. It will also help to address the threats from habitat fragmentation and urban development, altered ecological processes, and impacts from global climate change. The Service will work with willing landowners to create a 100,000-acre conservation area through conservation easements or other less-than-fee-title means, and a 50,000-acre national wildlife refuge.

The authorities to establish and manage the Everglades Headwaters National Wildlife Refuge and Conservation Area are the National Wildlife Refuge System Administration Act [16 U.S.C. 668dd(a)(2)], Endangered Species Act (16 U.S.C. 1534), Emergency Wetlands Resources Act [16 U.S.C. 3901(b), 100 Stat. 3583], Migratory Bird Conservation Act (16 U.S.C. 715d), Fish and Wildlife Act [16 U.S.C. 742f(a)(4)], and Refuge Recreation Act (16 U.S.C. 460k–460k–4).

Working with conservation land managers across this landscape, the Service will: (1) Manage the refuge and employ appropriate conditions for the conservation area to support a more connected and functional conservation landscape that will provide effective habitat connections between existing conservation areas and allow habitats and species to shift in response to urban development pressures and global climate change; (2) provide a wide range of quality Kissimmee River Basin habitats to support migratory birds, Federal- and State-listed species, State-designated species of special concern, and native wildlife diversity; (3) contribute to water quality, water quantity, and water storage capacity of the upper Everglades watershed to complement Everglades restoration goals and objectives and water quality and supply for central and south Florida; and (4) provide opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation, while increasing knowledge of and support for conservation of the important grassland and savanna landscape of the headwaters of the Everglades.

Several uses were evaluated in the interim compatibility determinations and determined to be compatible for the refuge. These included hunting, fishing, environmental education and interpretation, wildlife observation and photography, research, camping, hiking, horseback riding, bicycling, grazing, and off-road vehicle use (on designated roads and trails to support hunting and research). The Service is working with the Florida Fish and Wildlife Conservation Commission to establish a memorandum of understanding to also employ appropriate State wildlife management areas for hunting on properties acquired for the refuge.

On September 8, 2011, the Service published a **Federal Register** notice (76

FR 55699) announcing the proposed establishment of the Everglades Headwaters National Wildlife Refuge and Conservation Area, and the release for public review and comment of the Draft Land Protection Plan and Draft Environmental Assessment in accordance with National Environmental Policy Act (40 CFR 1506.6 (b)) requirements. On October 26, 2011, the Service published a **Federal Register** notice (76 FR 66321) announcing the extension of the comment deadline to November 25, 2011. With this extension, the public review and comment period on the Draft Land Protection Plan and Draft Environmental Assessment totaled 79 days.

Based on the documentation in the Final Land Protection Plan and Final Environmental Assessment, the Regional Director of the Southeast Region of the Service signed a Finding of No Significant Impact on December 9, 2011. Along with the interim compatibility determinations, we have developed a Conceptual Management Plan, which will serve as an interim management plan until the Service develops a Comprehensive Conservation Plan and/or appropriate step-down management plans.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–1019 Filed 1–18–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000 L14200000.BK0000]

Eastern States: Filing of Plats of Survey; Alabama and Minnesota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) will file the plats of survey of the lands described below in the BLM-Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Dominica Van Koten. 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: These surveys were requested by the Bureau of Indian Affairs.

The lands surveyed are:

St. Stephens Meridian, Alabama

T. 2 N., R. 6 E.

The plat of survey represents the dependent resurvey of a portion of the subdivisional lines and the survey of Tract No. 10, land held in trust for the Poarch Band of Creek Indians, in Sections 29 and 29, in Township 2 North, Range 6 East, of the St. Stephens Meridian, in the State of Alabama, and was accepted December 20, 2011.

Fourth Principal Meridian, Minnesota

T. 144 N., R 38 W.

The plat of survey represents the corrective dependent resurvey of a portion of the West boundary and the dependent resurvey of a portion of the East and South boundaries and a portion of the subdivisional lines and the survey of the subdivision of Sections 21, 25, 28, 30, 31, 33, and 36, in Township 144 North, Range 38 West, of the Fifth Principal Meridian, in the State of Minnesota, and was accepted December 20, 2011.

We will place copies of the plats we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against a survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plats until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: January 10, 2012.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2012–917 Filed 1–18–12; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD00000 L19900000.AL0000]

Call for Nominations for the Bureau of Land Management's California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management's (BLM) California Desert District is soliciting nominations from the public for six members of its California Desert District Advisory Council (Council) to serve 3-year terms. Council members provide advice and recommendations to the BLM on the management of public lands in southern California.

DATES: Nominations must be submitted within 45 days from the date of this notice.

ADDRESSES: Nominations should be sent to Teresa Raml, District Manager, Bureau of Land Management, California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553.

FOR FURTHER INFORMATION CONTACT: David Briery, BLM California Desert District External Affairs, (951) 697–5220.

SUPPLEMENTARY INFORMATION: The Council comprises 15 private individuals who represent different interests and advise BLM officials on policies and programs concerning the management of 11 million acres of public land in southern California. The Council meets in formal session three to four times each year in various locations throughout the BLM's California Desert District. Council members serve without compensation. Members serve 3-year terms and may be nominated for reappointment for additional 3-year terms.

Section 309 of the Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of BLM-administered lands. The Secretary also selects Council nominees consistent with the requirements of the Federal Advisory Committee Act (FACA), which requires nominees appointed to the Council be balanced in terms of points of view and representative of the various interests concerned with the management of the public lands.

The Council also is balanced geographically, and the BLM will try to

find qualified representatives from areas throughout the California Desert District. The District covers portions of 8 counties, and includes more than 10.8 million acres of public land in the California Desert Conservation Area of Mono, Inyo, Kern, San Bernardino, Riverside, and Imperial counties, as well as 300,000 acres of scattered parcels in San Diego, western Riverside, western San Bernardino, Orange, and Los Angeles Counties (known as the South Coast).

Public notice begins with the publication date of this notice and nominations will be accepted for 45 days from the date of this notice. The 3-year terms would begin immediately upon appointment by the Secretary of the Interior.

The six positions to be filled include one representative of transportation/rights-of-way groups or organizations, one elected official, one representative of renewable energy groups or organizations, one representative of non-renewable resources groups or organizations, one representative of environmental protection groups or organizations, and one representative of the public-at-large.

Any group or individual may nominate a qualified person, based upon education, training, and knowledge of the BLM, the California Desert, and the issues involving BLM-administered public lands throughout southern California. Qualified individuals also may nominate themselves.

The nomination form may be found on the Desert Advisory Council Web page: *http://www.blm.gov/ca/st/en/info/rac/dac.html.* The following must accompany the nomination form for all nominations:

○ Letters of reference from represented interests or organizations;

○ A completed background information nomination form; and

○ Any other information that addresses the nominee's qualifications.

Nominees unable to download the nomination form may contact the BLM California Desert District External Affairs staff at (951) 697–5220 to request a copy. Advisory Council members are appointed by the Secretary of the Interior.

The Obama Administration prohibits individuals who are currently federally registered lobbyists from being appointed or re-appointed to FACA and non-FACA boards, committees, or councils.

Authority: 43 CFR subpart 1784, FLPMA 43 U.S.C. 1739.

Teresa A. Raml,

California Desert District Manager.

[FR Doc. 2012–939 Filed 1–18–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0112–9197–2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 23, 2011. Pursuant to § 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th Floor, Washington, DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by February 3, 2012. Before including your address, phone number, email 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.

Alexandra Lord,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Maricopa County

Borden Homes Historic District, 1000–1100 blks. S. Una & S. Butte Aves., & 1600–1700 blks. E. 12th St., Tempe, 11001072.

Glendale Gardens Historic District, 5002–5038 W. Gardenia Ave., 5007–5038 W. State Ave., & 7251–7321 N. 50th Dr., Glendale, 11001073.

Sage Acres Historic District, 6021–62–51 N. 48th Ave. & 4736 W. Bethany Home Rd., Glendale, 11001074.

Pima County

Rillito Race Track Historic District, 4502 N. 1st Ave., Tucson, 11001075.

DISTRICT OF COLUMBIA

District of Columbia

Dorsch's White Cross Bakery, 641 S St. NW., Washington, 11001076.

FLORIDA

Sarasota County

Burrows, Waters and Elsa, Historic District, 400 Palmetto Ave., Osprey, 11001077.

KANSAS

Butler County

Beaumont Hotel, 11651 SE. Main St., Beaumont, 11001078.

Harvey County

Sedgwick Downtown Historic District, W. side of 500 blk. N. Commercial, Sedgwick, 11001079.

Russell County

Russell County Jail and Sheriff's Residence, 331 N. Kansas St., Russell, 11001080.

Sedgwick County

Luling's City Laundry, 1730–1746 E. Douglas, Wichita, 11001081.

Union National Bank Building, (African American Resources in Wichita, Kansas MPS), 104 S. Broadway, Wichita, 11001082.

MINNESOTA

Brown County

Berg's, C., Hotel, 145 W. Main St., Sleepy Eye, 11001084.

Sibley County

Gaylord City Park, Veterans Dr. & Park St., Gaylord, 11001085.

MISSOURI

Jackson County

Morningside Acres Historic Ranch House District, (Lee's Summit, Missouri MPS), Roughly 600 blk. E. of Independence Ave. between SE 3rd Ter. & SE. 5th St., Lee's Summit, 11001083.

NEVADA

Clark County

Morelli House, 861 E. Bridger Ave., Las Vegas, 11001086.

NEW YORK

Albany County

House at 698 Kenwood Avenue, 698 Kenwood Ave., Slingerlands, 11001087.

Rowe Farm, 281 Bridge St., South Bethlehem, 11001088.

Columbia County

Copake Memorial Clock, Main St., Copake, 11001089.

Dutchess County

Smithfield Presbyterian Church, 656 Smithfield Valley Rd., Amenia, 11001090.

Jefferson County

Storrs' Harbor Naval Shipyard Site, Address Restricted, Hounsfield, 11001091.

OHIO

Knox County

Downtown Mount Vernon Historic District, S. Main, S. Mulberry, S. Gay, High, Vine, Gambier & Howard Sts., Ohio Ave, & Phillips Dr., Mount Vernon, 11001092.

Mahoning County

St. John's Episcopal Church, 323 Wick Ave., Youngstown, 11001093.

TEXAS

McLennan County

Waco Downtown Historic District, Roughly bounded by Mary Ave., S. 14th St., Columbus Ave., & S. University Park Dr., Waco, 11001094.

[FR Doc. 2012–899 Filed 1–18–12; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the requirements for coal exploration has been submitted to the Office of Management and Budget (OMB) for review and approval. This information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by February 21, 2012, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax at (202) 395–5806 or via email to OfRA *Docket@omb.eop.gov.* Also, please send a copy of your comments to the Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 203–SIB, Washington, DC 20240, or electronically to *jtrelease@osinre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review this collection by going to *http://www.reginfo.gov.* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information contained in 30 CFR part 772—Requirements for Coal Exploration. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for 30 CFR part 772 is 1029–0112.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments for this collection of information was published on October 19, 2011 (76 FR 64973). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 772—Requirements for Coal Exploration.

OMB Control Number: 1029–0112.

Summary: OSM and state regulatory authorities use the information collected under 30 CFR part 772 to gather information on coal exploration activities, evaluate the need for an exploration permit, and ensure that exploration activities comply with the environmental protection and reclamation requirements of 30 CFR part 772 and section 512 of SMCRA (30 U.S.C. 1262).

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 1,312 operators planning to conduct coal exploration and 24 state regulatory authorities.

Total Annual Responses: 2,511.

Total Annual Burden Hours: 9,107.

Total Annual Non-Wage Burden Costs: $2,074.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the offices listed in **ADDRESSES.** Please refer to OMB control number 1029–0112 in all correspondence.

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

Dated: January 10, 2012.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2012–844 Filed 1–18–12; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–791; Inv. No. 337–TA–826 (Consolidated)]

Certain Electric Fireplaces, Components Thereof, Manuals for Same, Certain Processes for Manufacturing or Relating to Same and Certain Products Containing Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 13, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Twin-Star International, Inc. of Delray Beach, Florida and TS Investment Holding Corp. of Miami, Florida. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electric fireplaces, components thereof, manuals for same, certain processes for manufacturing or relating to same and certain products containing same by reason of infringement of U.S. Copyright Registration No. TX0007350474; U.S. Copyright Registration No.

TX0007350476; U.S. Copyright Registration No. VA0001772660; and U.S. Copyright Registration No. VA0001772661, misappropriation of trade secrets, breach of contract, and tortious interference with contract. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337, and that the threat or effect of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry in the United States as required by subsection (a)(1)(A) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 11, 2012, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electric fireplaces, components thereof, manuals for same, certain processes for manufacturing or relating to same and certain products containing same that infringe U.S. Copyright Nos. TX0007350474; TX0007350476; VA0001772660; and VA0001772661, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(b) whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electric fireplaces, components thereof, manuals for same, certain processes for manufacturing or relating to same and certain products containing same by reason of misappropriation of trade secrets, breach of contract, or tortious interference with contract, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Twin-Star International, Inc., 1690 South Congress Avenue, Suite 210, Delray Beach, FL 33445.

TS Investment Holding Corp., c/o Trivest Partners, L.P., 2665 South Bayshore Drive, 8th Floor, Miami, FL 33133.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Shenzhen Reliap Industrial Co., No. 3 Chuangye Road, The Third Industrial Zone, Shiyan Town, Baoan District, Shenzhen, China.

Yue Qiu Sheng (a.k.a. Jason Yue), Room #507, Building 3, Bang Dao Yuang, Bu Ji Town, Shenzhen City, China 518112.

Whalen Furniture Manufacturing Inc., 1578 Air Wing Road, San Diego, CA 92154.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436;

(3) This investigation is consolidated with Investigation No. 337–TA–791 currently pending before the Honorable David P. Shaw, Administrative Law Judge, U.S. International Trade Commission; and

(4) For the consolidated investigation so instituted, the Honorable Charles E. Bullock, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge, who may adjust the target date and procedural schedule of the consolidated investigation as necessary to avoid prejudice to the rights of the parties.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: January 13, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–983 Filed 1–18–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–827]

Certain Portable Communication Devices; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 2, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Digitude Innovations LLC of Alexandria, Virginia. An amended complaint was filed on December 16, 2011. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for

importation, and the sale within the United States after importation of certain portable communication devices by reason of infringement of certain claims of U.S. Patent No. 5,926,636 (''the '636 patent''); U.S. Patent No. 5,929,655 (''the '655 patent''); U.S. Patent No. 6,208,879 (''the '879 patent''); and U.S. Patent No. 6,456,841 (''the '841 patent''). The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on January 12, 2012, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain portable communication devices that infringe one or more of claims 7–13 and 15 of the '636 patent; claims 1–9 and 17–25 of the '655 patent; claims 1–8 and 14–20 of the '879 patent; and claims 1–5 of the '841 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Digitude Innovations LLC, 601 King Street, Suite 404, Alexandria, VA 22314.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Research In Motion Ltd., 295 Phillip Street, Waterloo, Ontario N2L 3W8, Canada.

Research In Motion Corp., 122 W. John Carpenter Parkway, Suite 430, Irving, TX 75039–2013.

HTC Corporation, 23 Xinghua Road, Taoyuan, 330, Taiwan.

HTC America, Inc., 13920 SE Eastgate Way, Suite 400, Bellevue, WA 98005.

LG Electronics, Inc., LG Twin Towers, 20, Yoido-dong, Youngdungpo-gu, Seoul, 157–721, South Korea.

LG Electronics U.S.A., Inc., 1000 Sylvan Ave., Englewood Cliffs, NJ 07632.

LG Electronics MobileComm U.S.A., Inc., 10101 Old Grove Road, San Diego, CA 92131.

Motorola Mobility Holdings, Inc., 600 N. U.S. Highway 45, Libertyville, IL 60048.

Samsung Electronics Co., Ltd, 1320–10, Seocho 2-dong Seocho-gu, Seoul, 137–857, South Korea.

Samsung Electronics America, Inc., 105 Challenger Rd., Ridgefield Park, NJ 07660.

Samsung Telecommunications America, LLC, 1301 East Lookout Drive, Richardson, TX 75082.

Sony Corporation, 1–7–1 Konan, Minato-ku, Tokyo 108–0075, Japan.

Sony Corporation of America, 550 Madison Avenue, New York, NY 10022–3211.

Sony Electronics, Inc., 16530 Via Esprillo, San Diego, CA 92127.

Sony Ericsson Mobile, Communications AB, Nya Vattentornet, Lund, 221 88, Sweden.

Sony Ericsson Mobile, Communications (USA) Inc., 7001 Development Drive, Research Triangle Park, NC 27709.

Amazon.com, Inc., 410 Terry Avenue North, Seattle, WA 98109–5210.

Nokia Corporation, Keilalahdentie 4, P.O. Box 226, FI–00045, Nokia Group, Espoo, Finland.

Nokia Inc., 6000 Connection Drive #MD2–2210, Irving, TX 75039.

Pantech & Curitel Communication, Inc., Peungwha Seocho Building, 1451–34, Seocho-Go, Seoul 137–070, South Korea.

Pantech Wireless, Inc., 5607 Glenridge Drive NE., Suite 500, Atlanta, GA 30342–7200.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: January 13, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–984 Filed 1–18–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Triad Mining, Inc.,* Civil Action No. 1:12–cv–0026, was lodged with the United States District Court for the Southern District of Indiana on January 11, 2012.

This proposed Consent Decree concerns a complaint filed by the United States against the Defendant, pursuant to Sections 309(b) and (d) of the Clean Water Act (''CWA''), 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from and impose civil penalties against the Defendant for the discharge of pollutants into waters of the United States without authorization by the United States, in violation of CWA Section 301(a), 33 U.S.C. 1311(a). The proposed Consent Decree resolves these allegations by requiring the Defendant to restore and/or mitigate the impacted areas and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Perry Rosen, Attorney, P.O. Box 7611, Washington, DC 20044 and refer to *United States* v. *Triad Mining, Inc.,* DJ# 90–5–1–1–18796.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Southern District of Indiana, 46 East Ohio Street Room 105, Indianapolis, Indiana, 46204. In addition, the proposed Consent Decree may be viewed at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 2012–914 Filed 1–18–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 01–12]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Wednesday, January 25, 2012: 9 a.m.—Issuance of Proposed Decisions in claims against Libya.

10 a.m.—Oral hearings on Objections to Commission's Proposed Decisions in Claim Nos. LIB–II–094; 11 a.m.—LIB–II–006; 11:45 a.m.—LIB–II–011; 2 p.m.—LIB–II–132, LIB–II–087.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Judith H. Lock, Executive Officer, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Jaleh F. Barrett,

Chief Counsel.

[FR Doc. 2012–1065 Filed 1–17–12; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Proposed Information Collection Request (ICR) for the Mining Voice in the Workplace Survey; Comment Request

AGENCY: Office of the Assistant Secretary for Policy, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL or the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by the Office of Management and Budget (OMB) under the PRA and the related materials display a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the related materials do not display a currently valid OMB control number. See 5 CFR 1320.5(a) and 1320.6.

A copy of the proposed ICR can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be received by the office listed in the addressee section below on or before March 19, 2012.

ADDRESSES: Send comments to Celeste Richie, U.S. Department of Labor, Chief Evaluation Office, Office of the Assistant Secretary for Policy, 200 Constitution Avenue NW., Frances Perkins Bldg., Room S–2312, Washington, DC 20210, telephone number (202) 693–5959 (this is not a toll-free number). Email address is *richie.celeste.j@dol.gov* and fax number is (202) 693–5960.

SUPPLEMENTARY INFORMATION:

1. Background

The U.S. Department of Labor (DOL) is performing a pilot study to determine how to measure workers' voice in mining workplaces under the jurisdiction of DOL's Mine Safety and Health Administration (MSHA). DOL's working definition for voice in the workplace is the ''workers' ability to access information on their rights in the workplace, their understanding of those rights, and their ability to exercise these rights without fear of discrimination or retaliation.'' Voice in the workplace is a key outcome goal for the Secretary of Labor and part of her vision of good jobs for everyone. A separate concurrent effort will measure workers' voice in workplaces under the jurisdiction of DOL's Wage and Hour Division (WHD) and Occupational Safety and Health Administration (OSHA). Measuring voice among miners, however, poses unique data collection challenges, including implementing a survey in a setting that feels non-threatening to mine workers, and asking questions in a format that reflects mining community cultures and practices. Thus, DOL is performing a pilot study to investigate the efficacy of different data collection methods and to develop a survey instrument that is appropriate for the mining community. The primary research question is ''What measures of voice and perceived non-compliance, combined with what modes of data collection, could be best used to track MSHA's worker protection outreach activity?'' This submission covers a set of 2–3 small-scale pilot data collections.

Data collection for this effort will employ 2–3 strategies: (1) Submission of

paper questionnaires to be filled out by individual mine workers during offsite mining-related training sessions, (2) recruitment of miners through use of radio and paper advertisements, and (3) a mail or phone survey. DOL is currently assessing the feasibility of each method prior to implementation. For example, implementation of a phone or mail survey will depend on the availability of a valid list of miners. A maximum of 125 respondents will be surveyed under each collection mode for a total of 375 maximum respondents for the overall effort.

2. Desired Focus of Comments

Currently, the Department of Labor is soliciting comments concerning the above data collection. Comments are requested which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

3. Current Actions

Pursuant to the PRA implementing regulations at 5 CFR 1320.8(d)(1), this notice requests comments on the proposed information collection request discussed above in the Background section of this notice. Interested parties are encouraged to provide comments to the individual list in the **ADDRESSES** section above.

Agency: Office of the Assistant Secretary for Policy.

Type of Review: New Collection.

Title of Collection: Miners' Voice in the Workplace Survey.

OMB Control Number: [Insert OMB Control Number].

Affected Public: Individuals or households.

Estimated Number of Respondents: 375 (maximum 125 respondents each collection mode).

Estimated Time per Response: 12–15 minutes.

Estimated Total Annual Burden Hours: 94 (based on 375 respondents at 15 minutes each).

Estimated Total Annual Other Cost to Public: $0.

Comments submitted in response to this request will be summarized and/or included in the request for OMB approval; they will also become a matter of public record.

Signed: at Washington, DC, this 11th day of January, 2012.

Megan Uzzell,

Deputy Assistant Secretary, Office of the Assistant Secretary for Policy.

[FR Doc. 2012–941 Filed 1–18–12; 8:45 am]

BILLING CODE 4510–22–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: PTE 2012–01, D–11676, The Kemper Corporation Pension Plan (the Plan); PTE 2012–02, D–11683, First Federal Bancshares of Arkansas, Inc. Employees' Savings and Profit Sharing Plan (the Plan); PTE 2012–03, L–11647, R+L Carriers Shared Services, LLC, *et al.*

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

The Kemper Corporation Pension Plan (the Plan) Located in Chicago, Illinois

[Prohibited Transaction Exemption 2012–01; Exemption Application Number D–11676]

Exemption

The restrictions of section 406(a)(1)(A) and (D), and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply, effective September 1, 2011, to the one-time, in-kind contribution (the Contribution) of shares of the common stock of Intermec, Inc. (the Stock) to the Kemper Corporation Pension Plan (the Plan) [1] by the Kemper Corporation (Kemper or the Applicant), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The Applicant makes cash contributions to the Plan to the extent that the cumulative proceeds from the sale of the Stock at each contribution due date (determined under section 303(j) of the Act) are less than the cumulative cash contributions the Applicant would have been required to make to the Plan, in the absence of the Contribution. Such cash contributions shall be made until all of the Stock contributed to the Plan is sold;

(b) The Applicant contributes to the Plan such cash amounts as are needed

[1] Prior to August 25, 2011, the Plan was known as the Unitrin, Inc. Pension Plan.

for the Plan to attain an Adjusted Funding Target Attainment Percentage (AFTAP) of at least 80% as of January 1, 2012, as determined by the Plan's actuary (the Actuary), without taking into account any unsold Stock as of April 1, 2012;

(c) Solely for purposes of determining the Plan's minimum funding requirements, AFTAP and funding target attainment percentage, the Actuary will not count as a Plan asset any Stock that has not been liquidated as a contribution to the Plan;

(d) For purposes of determining Plan contribution amounts, the Stock shall be considered a contribution only at the time it is sold, with the contribution amount being the lesser of the proceeds from the sale of the Stock, or the value of the Stock on the date of the Contribution as determined by the Independent Fiduciary described below;

(e) The Stock represents no more than 20% of the fair market value of the total assets of the Plan at the time it is contributed to the Plan;

(f) The Plan pays no commissions, costs or other expenses in connection with the contribution, holding or subsequent sale of the Stock and any such expenses paid by the Applicant are not treated as a contribution to the Plan;

(g) The terms of the Contribution between the Plan and the Applicant are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated parties;

(h) The Independent Fiduciary represents the interests of the Plan, the participants and beneficiaries with respect to the Contribution;

(i) The Independent Fiduciary determines that the Contribution is in the interests of the Plan and of its participants and beneficiaries and is protective of the rights of participants and beneficiaries of the Plan; and

(j) The Independent Fiduciary monitors the transaction on a continuing basis and takes all appropriate actions to safeguard the interests of the Plan to ensure that the transaction remains in the interests of the Plan, and, if not, takes appropriate action available under the circumstances.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 26, 2011 at 76 FR 59434.

Effective Date: This exemption is effective as of September 1, 2011.

Written Comments and Hearing Requests

During the comment period, the Department received approximately 70 telephone calls and six written comments in response to the notice of proposed exemption. None of the interested persons who contacted the Department requested a hearing. With one exception (discussed below), the telephone calls and written comments raised no substantive issues, but rather reflected the commenters' failure to fully understand the notice of proposed exemption. The Department provided explanations to each of the commenters by telephone, and each was satisfied with the responses provided by the Department.

One comment letter raised four questions and/or substantive issues. The Department asked the Applicant and the Independent Fiduciary, Fiduciary Counselors Inc., to respond to the issues and questions raised.

The commenter first inquired as to how Kemper acquired the Stock from its affiliate, Trinity Universal Insurance Company (Trinity). The Applicant responded that Kemper acquired the shares of Intermec from Trinity via a cash transaction. Trinity received approximately $50.8 million in cash for the shares of the Stock sold to Kemper.

The commenter then inquired if there were other subsidiaries of Kemper that own shares of the Stock. The Applicant responded that no other subsidiaries of Kemper own any shares of the Stock.

The third issue raised was that while the Independent Fiduciary determined that the Contribution is in the best interests of the Plan and its participants and beneficiaries, the commenter stated that there was no detail in the notice of proposed exemption to support this statement. The Independent Fiduciary responded to this by describing the protections that were written into the proposed exemption as conditions, citing in particular conditions (a) through (d) of the operative language above.

The Independent Fiduciary then confirmed that it performed a financial analysis of Intermec and the Stock to determine if the Contribution was an acceptable investment in the Plan. The Independent Fiduciary represents that Intermec is a global business that designs, develops, integrates sells and resells wired and wireless automated identification and data collection products and related services. Its products include mobile computers, bar code scanners, printers, label media and radio frequency identification products and related software. Additionally, due to its acquisition of Vocollect in the first quarter of 2011, its products now include voice data and collection terminals. Intermec also offers services related to its product offerings such as training and repair services. Most of its revenue is currently generated through sales of mobile computers, barcode scanners, printers and repair services.

Intermec has, according to its President and CEO, transformed its business in recent years from that of a hardware company to a company which provides mobile business solutions. The Independent Fiduciary states that even while Intermec has repositioned itself in the market place, its balance sheet remains strong. As of December 31, 2010, assets totaled $749 million, while liabilities were only $288 million, with stockholders' equity at $461 million, representing about 62% of the assets. As of July 3, 2011, assets increased to $870 million and liabilities totaled $414 million. Stockholders' equity of $455 million was 52% of assets. During the quarter, Intermec borrowed $77 million under its $100 million credit facility. (Intermec had borrowed $97 million to fund the acquisition of Vocollect and had repaid $20 million as of the end of the second quarter.) This $77 million represents only 9% of total assets and the debt to equity ratio is just 17%.

The comment letter also asked the Independent Fiduciary if it would recommend to a pension plan the purchase of such a large number of shares of a stock that does not pay any dividends to that plan. The Independent Fiduciary responded that a dividend, or lack of a dividend, is not a determinate of whether a stock is an acceptable investment under ERISA. The letter also asked the Independent Fiduciary whether a pension plan should have 13.5% of its assets invested in one stock or own more than 10% of any one company. The Independent Fiduciary responded that it reviewed the Plan's Investment Policy to ensure that the Contribution would be an acceptable investment for the Plan. The Investment Policy permits investments in individual stocks. The Independent Fiduciary did note that this asset would account for a greater percentage of the portfolio than is typical for a single asset. However, as the proposed exemption requires liquidation of the Stock over a relatively short time period, and the conditions agreed to by Kemper provide effective downside protection with respect to the Contribution, the Independent Fiduciary determined that it was permissible for the Contribution to temporarily overweight the Plan's portfolio.

The final set of questions raised by the comment letter concerned whether the Applicant would incur all of the costs associated with the transaction. The Applicant confirmed that one of the conditions of the proposed exemption is that Kemper will pay all commissions, costs or other expenses in connection with the Contribution, holding or subsequent sale of the Stock. Thus, the Plan will not bear any of the costs associated with the transaction.

The commenter also questioned what is to be gained by contributing the Stock to the Plan, as opposed to having Trinity sell the Stock, dividend the proceeds to Kemper and have Kemper put cash into the Plan. The Applicant responded that the participants in the Plan are better off having the Stock in the Plan because the Contribution is substantially in excess of the required minimum contributions. The proposed exemption is structured so that the Contribution only counts for funding purposes once the Stock has been liquidated by the Plan. The representations made by Kemper, as detailed in the proposed exemption, effectively eliminate any downside to the Plan from the Contribution. If the Stock were retained by Trinity, the participants would have no guarantee that the Plan would receive the proceeds from the sale of the Stock.

The Department has given full consideration to the entire record, including the comment letter received and the responses by the Applicant and the Independent Fiduciary thereto. The Department has determined to grant the exemption as it was proposed.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

First Federal Bancshares of Arkansas, Inc. Employees' Savings and Profit Sharing Plan (the Plan) Located in Harrison, Arkansas

[Application No. D–11683; Prohibited Transaction Exemption No. 2012–02]

Exemption

Section I: Transactions

Effective May 10, 2011, the restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(E) of the Code,[2] shall not apply:

(1) To the acquisition of certain rights (the Rights) by the Plan in connection with an offering (the Offering) of shares of the common stock (the Stock) of First Federal Bancshares of Arkansas, Inc. (Bancshares) by Bancshares, a party in interest with respect to the Plan, and

(2) To the holding of the Rights received by the Plan during the subscription period of the Offering; provided that the conditions as set forth in section II of this exemption were satisfied for the duration of the acquisition and holding.

Section II: Conditions

The relief provided in this exemption is conditioned upon adherence to the material facts and representations described, herein, and as set forth in the application file and upon compliance with the conditions, as set forth in this exemption.

(1) The receipt of the Rights by the Plan occurred in connection with the Offering and was made available by Bancshares on the same terms to all shareholders of the Stock of Bancshares;

(2) The acquisition of the Rights by the Plan resulted from an independent act of Bancshares, as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to the acquisition of such Rights;

(3) Each shareholder of the Stock, including the Plan, received the same proportionate number of Rights based on the number of shares of Stock of Bancshares held by such shareholder;

(4) The Rights were acquired pursuant to provisions under the Plan for individually directed investments of the accounts of the individual participants (the Invested Participants), all or a portion of whose accounts in the Plan hold the Stock;

(5) The decisions with regard to the holding and disposition of the Rights by the Plan were made by each of the Invested Participants in accordance with the provisions under the Plan for individually-directed accounts; and

(6) No brokerage fees, no commissions, no subscription fees, and no other charges were paid by the Plan with respect to the Offering, and no brokerage fees, no commissions, and no other monies were paid by the Plan to any broker in connection with the exercise of the Rights.

Effective Date: This exemption is effective, May 10, 2011, the commencement date of the Offering.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on November 14, 2011, at 76 FR 70505.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

R+L Carriers Shared Services, LLC, Located in Wilmington, Ohio

[Prohibited Transaction Exemption 2012–03; Exemption Application No. L–11647]

Exemption

The restrictions of sections 406(a) and (b) of the Act shall not apply to the reinsurance of risks, and receipt of premiums related therefrom, by Royal Assurance, Inc. (Royal Assurance), in connection with insurance contracts sold by Unum Life Insurance Company of America (Unum), or any successor insurance company to Unum which is unrelated, to the R+L Carriers Shared Services, LLC to provide group life, short-term disability (STD), long-term disability (LTD), and Accidental Death and Dismemberment (AD&D) insurance benefits to employees of the R+L Companies[3] under an employee welfare benefit plan (the Plan)[4] sponsored by the R+L Carriers Shared Services, LLC, provided the following conditions are met:

(a) Royal Assurance—

[2] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[3] The individual related employers comprising the R+L Companies are: (1) R+L Carriers Shared Services, LLC; (2) Strategic Management, LLC; (3) Paramount Transportation Logistics Services, LLC; (4) R+L Carriers Payroll, LLC; (5) Paramount Labor Leasing Southern, LLC; (6) Paramount Labor Leasing Eastern, LLC; (7) Golden Ocala Management, Inc.; (8) Royal Resorts, LLC; (9) ABCO Transportation, Inc.; (10) Spirit Express Trucking, Inc.; (11) Royal Shell Property Management, Inc.; (12) Quality Quest Linen Service, Inc.; (13) Royal Shell Vacations, Inc.; (14) AFC LS, LLC; and (15) AFC Worldwide Express, Inc. The foregoing employers, along with the captive insurer, Royal Assurance, constitute the applicants requesting an individual exemption for the transaction described herein.

[4] The applicants represent that Mr. Ralph ''Larry'' Roberts, Sr., the founder of the R+L Companies, is the owner (either directly, or indirectly through the combined voting interests of his spouse and his children) of 50 percent or more of the combined voting power of all classes of stock entitled to vote of each of the employers constituting the R+L Companies whose employees are covered under the Plan. Therefore, according to the applicants, Mr. Roberts is a party in interest with respect to the Plan for purposes of section 3(14)(E) of the Act. The applicants further represent that Mr. Roberts is the owner, either directly or indirectly, of 50 percent or more of the combined voting power of all classes of stock entitled to vote of the captive, Royal Assurance; accordingly, the applicants represent that Royal Assurance is a party in interest with respect to the Plan for purposes of section 3(14)(G) of the Act. In this regard, the Department is providing no opinion herein as to whether Mr. Roberts is a party in interest with respect to the Plan for purposes of section 3(14)(E) of the Act; similarly, the Department is providing no opinion herein as to whether Royal Assurance is a party in interest with respect to the Plan for purposes of section 3(14)(G) of the Act.

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with R+L Carriers Shared Services LLC that is described in section 3(14)(E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Director of the Department of Insurance of its domiciliary state which has neither been revoked nor suspended;

(4)(A) Has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or (B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Arizona) by the Director of the Arizona Department of Insurance within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plan with respect to the reinsurance of such contracts;

(d) In the initial year of any contract involving Royal Assurance, there will be an immediate and objectively determined benefit to the Plan's participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, the formula used to calculate premiums by Unum or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Plan only contracts with insurers with a financial strength rating of ''A'' or better from A. M. Best Company (A. M. Best). The reinsurance arrangement between the insurer and Royal Assurance will be indemnity insurance only, *i.e.,* the insurer will not be relieved of liability to the Plan should Royal Assurance be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(g) The Plan retains an independent fiduciary to analyze the transaction and render an opinion that the requirements of sections (a) through (f) have been satisfied. For purposes of the exemption, the independent fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with an applicant (this relationship hereinafter referred to as an affiliate);

(2) Is not an officer, director, employee of, or partner in, Royal Assurance or any other applicant (or an affiliate of either);

(3) Is not a corporation or partnership in which Royal Assurance or any other applicant has an ownership interest or is a partner;

(4) Does not have an ownership interest in Royal Assurance, or any of the other applicants, or their Affiliates;

(5) Is not a fiduciary with respect to the Plan prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an ''independent fiduciary,'' no organization or individual may serve as an independent fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from Royal Assurance, any other applicant, or their affiliates (including amounts received for services as independent fiduciary under any prohibited transaction exception granted by the Department) for that fiscal year exceeds one percent of that organization or individual's annual gross income from all sources for the prior fiscal year.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow funds from Royal Assurance, any other applicant, or their affiliates during the period that such organization or individual serves as independent fiduciary, and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiates any such transaction during the period that such organization or individual serves as independent fiduciary.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 26, 2011 at 76 FR 59441.

For Further Information Contact: Mr. Gary Lefkowitz of the Department at (202) 693–8546. This is not a toll-free number.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of January, 2012.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2012–930 Filed 1–18–12; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of an Open Meeting of the Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Announcement of Meeting.

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463; as amended 5 U.S.C., App. 2), notice is hereby given to announce an open meeting of the Advisory Committee on Apprenticeship (ACA) being held on February 2–3, 2012, in Washington, DC.

The ACA, an advisory board to the Secretary of Labor, is a discretionary Committee established by the Secretary of Labor, in accordance with the provisions of the Federal Advisory Committee Act, as amended 5 U.S.C., App. 2, and its implementing regulations (41 CFR parts 101–6 and 102–3). All meetings of the ACA are open to the public.

Time and Date: The meeting will begin at approximately 8:30 a.m. Eastern Time on Thursday, February 2, 2012, and continue until approximately 5 p.m. The meeting will reconvene on Friday, February 3, 2012, at approximately 8:30 a.m. Eastern Time and adjourn at approximately 12 noon.

Address: The meeting location is the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official, Mr. John V. Ladd, Administrator, Office of Apprenticeship, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5311, Washington, DC 20210. *Telephone:* (202) 693–2796, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This meeting is open to the public and members of the public are invited to attend the proceedings. If individuals have special needs and/or disabilities that will require special accommodations, please contact Ms. Marisa Nixon on (202) 693–3616 no later than Thursday, January 26, 2012, to request for arrangements to be made. Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending the data or comments to Mr. John V. Ladd, Administrator, Office of Apprenticeship, ETA, U.S. Department of Labor, Room N–5311, 200 Constitution Avenue NW., Washington, DC 20210. Such submissions must be received by Thursday, January 26, 2012, to be included in the record for the meeting.

Purpose of the Meeting and Topics To Be Discussed

The purpose of the meeting is to consider several policy matters affecting Registered Apprenticeship programs. The meeting will focus on the following topics:

- Workgroup Report-outs and Open Committee Discussion.
- Equal Employment Opportunity (EEO) in Registered Apprenticeship.
- Veterans Opportunity to Work to Hire Heroes Act of 2011.
- Presentation by the Employment Benefits Security Administration (EBSA) on current monitoring and oversight activities for Apprenticeship Training Trust funds.
- YouthBuild and Registered Apprenticeship Partnerships.
- Overview of Preliminary Findings on the Net Social Benefits of Registered Apprenticeship.
- Planning for 75th Anniversary of the National Apprenticeship Act of 1937.
- Other Matters of Interest to the Apprenticeship Community.
- Public Comment.

Any member of the public who wishes to speak at the meeting must indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official, Mr. John V. Ladd, which must be received by Thursday, January 26, 2012. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 10th day of January 2012.

Jane Oates,

Assistant Secretary for the Employment and Training Administration.

[FR Doc. 2012–927 Filed 1–18–12; 8:45 am]

BILLING CODE 4510–FR–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–003)]

NASA International Space Station Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

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 an open meeting of the NASA International Space Station (ISS) Advisory Committee. The purpose of the meeting is to assess NASA and Roscosmos continuing plans to support a six-person crew aboard the International Space Station, including transportation, and crew rotation; and, to assess the possibilities for using the ISS for future space exploration.

DATES: February 9, 2012, 12:00–1 p.m. Eastern Standard Time.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street SW., Glennan Conference Room, 1Q39, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. J. Donald Miller, Office of International and Interagency Relations, (202) 358–1527, National Aeronautics and Space Administration, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION: It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. This meeting will be open to the public up to the seating capacity of the room. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship and green cards should provide identifying information 3 working days in advance by contacting Dr. Miller via email at *j.d.miller@nasa.gov* or by telephone at (202) 358–1527.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–977 Filed 1–18–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts Advisory Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice; correction.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, this notice is providing corrected information regarding the previously announced open session of the State and Regional/Folk and Traditional Arts (state folk arts projects review) meeting, scheduled for January 19–20, 2012 in Room 714. This meeting, incorrectly listed as an open meeting from 3 p.m. to 5:30 p.m. on January 19th and from 9 a.m. to 5:30 p.m. on January 20th, will be closed.

DATES: January 19–20, 2012.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2011, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: January 13, 2012.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2012–1016 Filed 1–13–12; 4:15 pm]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts Advisory Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice—additional information.

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, this notice is providing additional information regarding the previously announced open session of the Media Arts panel, scheduled for January 26, 2012 from 3 p.m. to 4:30 p.m. This open session will be webcast.

Instructions for Joining the Webinar

You do not need to register in order to attend the webinar. Simply go to the URL below. You do not need special software; make sure, however, that you have the latest version of Flash. Go to *http://artsgov.adobeconnect.com/arts-in-media/* and click ''Enter as Guest.'' Type in your full name, then click ''Enter Room.'' You can listen using your computer speakers or dial-in toll-free to 1–(877) 685–5350, participant code: 942738. You will be muted, but able to ask questions by typing into a Q&A box.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: January 13, 2012.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2012–965 Filed 1–18–12; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414; NRC–2012–0003]

Facility Operating License Amendment from Duke Energy Carolinas, LLC., Catawba Nuclear Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment; request for comment and hearing, and order.

DATES: Submit comments by February 21, 2012. A request for a hearing must be filed by March 19, 2012. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.4 who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by January 30, 2012.

ADDRESSES: Please include Docket ID NRC–2012–0003 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2012–0003. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

SUPPLEMENTARY INFORMATION

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* The application for amendments, dated June 30, 2011, as supplemented by letter dated July 11, 2011, contains proprietary information and, accordingly, those portions are being withheld from public disclosure. A redacted version of the application for amendments, dated June 30, 2011, is

available electronically under ADAMS Accession No. ML11188A108. A redacted version of the July 11, 2011, supplement is available electronically under ADAMS Accession No. ML11195A067.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2012–0003.

FOR FURTHER INFORMATION CONTACT: John F. Stang, Project Manager, Plant Licensing Branch 2–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–1345; email: *John.Stang@nrc.gov.*

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of amendments to Renewed Facility Operating Licenses NPF–35 and NPF–52 issued to Duke Energy Carolinas, LLC (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendment would revise the Technical Specifications (TS) to accomplish the following objectives:

• Permanently exclude portions of a steam generator (SG) tube below the top of the SG tubesheet from periodic SG tube inspections and plugging,

• Permanently reduce the primary to secondary leakage limit, and

• Permanently implement reporting requirement changes that had been previously established on a one-cycle basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1:

Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to TS 3.4.13, TS 5.5.9, and TS 5.6.8 have no significant effect upon accident probabilities or consequences. Of the various accidents previously evaluated, the following are limiting with respect to the proposed changes as discussed in this amendment request:

• SG Tube Rupture evaluation

• Steam Line Break/Feed Line Break evaluation

• Locked Rotor evaluation

• Control Rod Ejection evaluation

Loss of Coolant Accident conditions cause a compressive axial load to act on the tube. Therefore, since this accident tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this amendment request. Another faulted load consideration is a Safe Shutdown Earthquake; however, the seismic analysis of Model D5 SGs (the SGs at Catawba) has shown that axial loading of the tubes is negligible during this event. At normal operating pressures, leakage from Primary Water Stress Corrosion Cracking (PWSCC) below 14.01 inches from the top of the tubesheet is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region. For the SG Tube Rupture event, tube rupture is precluded for cracks in the hydraulic expansion region due to the constraint provided by the tubesheet. Therefore, the margin against tube burst/pullout is maintained during normal and postulated accident conditions and the proposed change does not result in a significant increase in the probability of a tube rupture. SG Tube Rupture consequences are not affected by the primary to secondary leakage flow during the event, as primary to secondary leakage flow through a postulated tube that has been pulled out of the tubesheet is essentially equivalent to that from a severed tube. Therefore, the proposed change does not result in a significant increase in the consequences of a tube rupture.

The probability of a Steam Line Break/Feed Line Break, Locked Rotor, and Control Rod Ejection are not affected by the potential failure of a SG tube, as the failure of a tube is not an initiator for any of these events. In the supporting Westinghouse analyses, leakage is modeled as flow through a porous medium via the use of the Darcy equation. The leakage model is used to develop a relationship between operational leakage and leakage at accident conditions that is based on differential pressure across the tubesheet and the viscosity of the fluid. A leak rate ratio was developed to relate the leakage at operating conditions to leakage at accident conditions. The fluid viscosity is based on fluid temperature and it has been shown that for the most limiting accident, the fluid temperature does not exceed the normal operating temperature.

Therefore, the viscosity ratio is assumed to be 1.0 and the leak rate ratio is a function of the ratio of the accident differential pressure and the normal operating differential pressure.

The leakage factor of 3.27 for Catawba Unit 2 for a postulated Steam Line Break/Feed Line Break has been calculated as shown in the supporting Westinghouse analyses. Therefore, Catawba Unit 2 will apply a factor of 3.27 to the normal operating leakage associated with the tubesheet expansion region in the Condition Monitoring assessment and Operational Assessment. Through application of the limited tubesheet inspection scope, the proposed operating leakage limit provides assurance that excessive leakage (i.e., greater than accident analysis assumptions) will not occur. No leakage factor will be applied to the Locked Rotor or Control Rod Ejection due to their short duration, since the calculated leak rate ratio is less than 1.0.

Therefore, the proposed change does not result in a significant increase in the consequences of these accidents.

For the Condition Monitoring assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 3.27 and added to the total leakage from any other source and compared to the allowable accident induced leakage limit. For the Operational Assessment, the difference in the leakage between the allowable leakage and the accident induced leakage from sources other than the tubesheet expansion region will be divided by 3.27 and compared to the observed operational leakage.

Based on the above, the performance criteria of NEI 97–06 and Regulatory Guide (RG) 1.121 continue to be met and the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2:

Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to TS 3.4.13, TS 5.5.9, and TS 5.6.8 do not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity is expected to be maintained for all plant conditions upon implementation of the permanent alternate repair criteria. The proposed change does not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3:

Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to TS 3.4.13, TS 5.5.9, and TS 5.6.8 maintain the required structural margins of the SG tubes for both

normal and accident conditions. NEI 97–06 and RG 1.121 are used as the basis in the development of the limited tubesheet inspection depth methodology for determining that SG tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC staff for meeting GDC 14, 15, 31, and 32 by reducing the probability and consequences of a SG Tube Rupture. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation, the probability and consequences of a SG Tube Rupture are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, the supporting Westinghouse analyses defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary to secondary leakage during all plant conditions. The methodology for determining leakage as described in the supporting Westinghouse analyses shows that significant margin exists between an acceptable level of leakage during normal operating conditions that ensures meeting the accident induced leakage assumption and the TS leakage limit. Based on the above, it is concluded that the proposed change does not result in any reduction of margin with respect to plant safety as defined in the Updated Final Safety Analysis Report (UFSAR) or Bases of the plant TS.

Based on the above, Duke Energy concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of no significant hazards consideration is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received by February 21, 2012 will be considered in making any final determination. You may submit comments using any of the methods discussed in the **ADDRESSES** section of this document.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

II. Opportunity To Request a Hearing; Petitions for Leave To Intervene

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing requests, Petitions to intervene, Requirements for standing, and Contentions.'' Interested persons should consult 10 FR 2.309, which is available at the NRC's Public Document Room (PDR), Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. You may also call the PDR at 1–(800) 397–4209 or (301) 415–4737. The NRC regulations are also accessible online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.*

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the requestor/petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the requestor or petitioner and specifically explain the reasons why the intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the requestor/petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the requestor/petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must include a concise statement of the alleged facts or expert opinions which support the position of the requestor/petitioner and on which the requestor/petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the requestor/petitioner disputes and the supporting reasons for each dispute, or, if the requestor/petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requestor's/petitioner's belief. Each contention must be one which, if proven, would entitle the requestor/petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board (the Licensing Board) will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a presiding officer that the petition should be granted and/

or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by March 19, 2012. The petition must be filed in accordance with the filing instructions in Section III of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by March 19, 2012.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–(866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–

0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from January 19, 2012. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 12th day of January 2012.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

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BILLING CODE 7590–01–P

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66140; File No. SR–C2–2012–002]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

January 11, 2012.

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 January 6, 2012, the C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') 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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule. 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.

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

On September 2, 2011, the Commission approved a proposed rule change filed by the Exchange to permit on a pilot basis the listing and trading on C2 of Standard & Poor's 500 Index (''S&P 500'') options with third-Friday-of-the-month (''Expiration Friday'') expiration dates for which the exercise settlement value will be based on the index value derived from the closing prices of component securities (''SPXPM'').[3] On September 28, 2011, the Exchange filed an immediately-effective rule change to adopt fees associated with the anticipated trading of SPXPM (the ''Initial SPXPM Fees Filing'').[4] In the Initial SPXPM Fees Filing, the Exchange adopted an SPXPM Tier Appointment Fee of $4,000 which would be charged to any Market-Maker Permit holder that has an appointment (registration) in SPXPM at any time during a calendar month, but the Exchange also waived that fee through November 30, 2011. On November 23, the Exchange extended that waiver through December 31, 2011.[5] The Exchange had intended to extend that waiver through February 29, 2012, but unintentionally did not do so. The Exchange hereby proposes continuing that waiver through February 2012. The SPXPM Tier Appointment Fee for January 2012, which would have been billed at the end of the month, will not be billed. The purpose of this waiver extension is to allow more time for the SPXPM market to develop and allow and encourage Market-Makers to join in and elect for an SPXPM Tier Appointment.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4)[7] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among C2 Trading Permit Holders and other persons using Exchange facilities. Continuing the waiver of the SPXPM Tier Appointment Fee is reasonable because it will allow Market-Makers with an SPXPM Tier Appointment to avoid paying the Tier Appointment Fee for another month [*sic*],[8] and is equitable and not unfairly discriminatory because all Market-Makers with an SPXPM Tier Appointment will be able to avoid paying the SPXPM Tier Appointment Fee through February 29, 2012.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition 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[9] and subparagraph (f)(2) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 email to *rule-comments@sec.gov.* Please include File Number SR–C2–2012–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2012–002. This file number should be included on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR–C2–2011–008).

[4] *See* Securities Exchange Act Release No. 34–65471 (October 3, 2011), 76 FR 62491 (October 7, 2011) (SR–C2–2011–026).

[5] *See* Securities Exchange Act Release No. 34–65874 (December 2, 2011), 76 FR 76785 (December 8, 2011) (SR–C2–2011–037).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] The Commission notes that C2 has proposed to extend the waiver for an additional two months, not one month as the Exchange stated.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the C2. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2012–002 and should be submitted on or before February 9, 2012.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–897 Filed 1–18–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No. DOT–OST–2011–0129]

Proposed Information Collection Request; Notice of New Requirements and Procedures for Grant Payment Request Submission

AGENCY: Department of Transportation (DOT).

ACTION: Notice with request for comments.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary (OST) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 10, 2011, allowing for a 60-day public comment period.

DATES: Comments must be submitted on or before February 21, 2012.

ADDRESSES: Direct comments to the Department of Transportation Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the information collection title and OMB control number in the subject line of your message.
- *Fax:* (202) 395–5806. Attn: Desk Officer for Department of Transportation\OST.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from U.S. Department of Transportation, Office of Financial Management, B–30, room W93–431, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, (202) 366–1306, *DOTElectronicInvoicing@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Notice of Requirements and Procedures for Grant Payment Request Submission.

Type of Request: New information collection.

Background: This notice sets forth requirements and procedures for grantees that receive payments from DOT OAs,[1] with the exception of DOT grant recipients requesting payment electronically through the National Highway Traffic Safety Administration's Grant Tracking System (GTS), the Federal Highway Administration's Rapid Approval State Payment System (RASPS), or Federal Transit Administration (FTA) grant recipients requesting payment through the Electronic Clearing House Operation System (ECHO–Web).

[1] The DOT OAs are: Office of the Secretary of Transportation (OST), Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), National Highway Traffic Safety Administration (NHTSA), Office of Inspector General (OIG), Pipeline and Hazardous Materials Safety Administration (PHMSA), Research and Innovative Technology Administration (RITA), Saint Lawrence Seaway Development Corporation (SLSDC) and Surface Transportation Board (STB).

The Proposed Procedures Provide That

- Grantees will now be required to have electronic Internet access to register in the Delphi eInvoicing system.
- Grantees will be required to submit payment requests electronically and DOT OAs must process payment requests electronically.
- The identities of system users must be verified prior to receiving access to the Delphi eInvoicing system. Users must complete a user request form and provide the following information: Full name, work address, work phone number, work email address, home address and home phone number. Once completed, this form must be presented to a Notary Public for verification. Once notarized, the prospective grantee user will return the form to receive their login credentials.
- DOT Office of Financial Management officials may allow exceptions to the requirement that grantees register and submit payment requests through the Delphi eInvoicing system under limited circumstances. Recipients may apply for an exemption by submitting an electronic Waiver Request Form to the DOT Office of Financial Management. The exceptions will be considered on a case by case basis via Waiver Request Form.

Affected Public: DOT Grant Recipients.

Estimated Number of Respondents: 11,000.

Estimated Number of Responses: 11,000.

Annual Estimated Total Annual Burden Hours: 22,000 (est. 2 hours to complete process × 11,000 recipients).

Frequency of Collection: One time.

Comments: Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents.

Issued in Washington, DC, on January 12, 2012.

Patricia Lawton,

Paperwork Reduction Act Clearance Officer, Department of Transportation.

[FR Doc. 2012–944 Filed 1–18–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Intent To Prepare a Supplemental Environmental Impact Statement: Fond du Lac & Sheboygan Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is issuing this notice to advise the public that a limited scope Supplemental Environmental Impact Statement (SEIS) will be prepared for the proposed capacity improvements to Wisconsin Highway 23 from U.S. Highway 151 to County Highway P in Fond du Lac and Sheboygan Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Bethaney Bacher-Gresock, Environmental Program Manager, FHWA, 525 Junction Road, Suite 8000, Madison, WI 53717–2157; Telephone: (608) 662–2119. You may also contact Rebecca Burkel, Director, Bureau of Technical Services, Wisconsin Department of Transportation, 3502 Kinsman Blvd., Madison, WI 53704–2549; Telephone (608) 246–5399.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation (WisDOT) will prepare a limited scope SEIS in accordance with 23 CFR 771.130(f) and 40 CFR 1502.9 for the proposed capacity improvements along approximately 19 miles of Wisconsin Highway 23 from U.S. Highway 151 in the City of Fond du Lac to County Highway P in the City of Plymouth, in Fond du Lac and Sheboygan Counties, Wisconsin. The purpose of the SEIS is to clarify certain parts of the previously approved June 3, 2010 Final Environmental Impact Statement (FEIS) and to reconsider certain portions, including parts of the Section 4(f) evaluation and indirect and cumulative impacts analysis. In accordance with its regulations, FHWA also will evaluate and provide additional analysis, if needed, on any new or changed impacts to the human and natural environment since the issuance of the Record of Decision (ROD) on September 27, 2010. The ROD selected a build alternative involving construction of a 4-lane divided highway along the existing Wisconsin Highway 23 alignment, three interchanges (at County Highway K, County Highway UU, and County Highway G), and local road and access improvements. The ROD also selected a corridor preservation alternative for the Wisconsin Highway 23 corridor (except for the U.S. 151 interchange where there will be no corridor preservation), to preserve the right-of-way needed for future interchanges and grade separations.

The SEIS will follow the same process and format as the original EIS (Draft EIS, FEIS, and ROD), except that scoping is not required. The FEIS and ROD are available at *http://www.dot.wisconsin.gov/projects/neregion/23/environ.htm.*

Public involvement is a critical component of the National Environmental Policy Act (NEPA) project development process and will occur throughout the development of the environmental documents. Environmental documents will be made available for review by resource agencies and the public. Public hearing(s) will be held following the availability of the Draft SEIS and as necessary. The public hearing(s) will be accessible and held at a convenient time and location. Individuals will be provided the opportunity to offer official comments by publicly expressing their views to representatives of WisDOT and others in attendance, privately to a court reporter, or by submitting written comments. WisDOT will provide FHWA with a transcript of the public hearing(s) and copies of submitted written comments.

Letters describing the proposed action and soliciting comments will be sent to the appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposed project. To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposed action and the SEIS should be directed to the FHWA at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway, Planning, and Construction. The regulations implementing Executive Order 12372 regarding the intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 11, 2012.

R. Kirk Fredrichs,

Assistant Division Administrator, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. 2012–925 Filed 1–18–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2003–15754]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 211 of Title 49 of the Code of Federal Regulations, this document provides the public notice that by a document dated December 16, 2011, the Reading, Blue Mountain and Northern Railroad (RBMN) has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA has reopened and assigned the application Docket Number FRA–2003–15754.

Applicant: Reading, Blue Mountain and Northern Railroad, Mr. Jonathan Barket, AVP, Communications & Signals, 1 Railroad Boulevard, Port Clinton, Pennsylvania 19549.

RBMN seeks approval of the proposed discontinuance of the automatic block signal (ABS) system on Track 1 on the main line and Lehighton Branch, Lehigh Division, between Milepost (MP) 119.3, Lehighton, and MP 130.6, Independence, PA.

The reason given for the proposed change is that the signal system has been out of service since being damaged by weather in December 2003. RBMN applied, in Docket Number FRA–2003–15754, for an extension to the time allowed to repair the signal system after the damage. The application was denied due to not being filed correctly. At the time, there was another railroad operating in the application area and the application was not submitted as a joint application. RBMN did not resubmit a joint application as requested in FRA's decision letter denying the application. In the ensuing years, operations have changed, with RBMN being the sole operator on the trackage involved. RBMN records indicate that the ABS has been out of service since before the August 1996 acquisition of this section of railroad. Since the acquisition, RBMN states they have operated this section by means of Northeast Operating Rules Advisory Committee (NORAC) Form D permits. FRA records continue to show the area being operated under NORAC Rule 251. Therefore RBMN requests to discontinue the ABS.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200

New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number 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.

Communications received by March 5, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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 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 online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on January 12, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–1003 Filed 1–18–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0033; Notice 2]

Goodyear Tire and Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of Petition Grant.

SUMMARY: Goodyear Tire and Rubber Company,(Goodyear),[1] has determined that approximately 26,224 Goodyear Assurance ComforTred Touring passenger replacement car tires manufactured between January 4, 2010 and September 11, 2010, did not fully comply with paragraph S5.5(e) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Goodyear has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports (dated December 16, 2010).*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Goodyear has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of Goodyear's petition was published with a 30-day public comment period, on March 18, 2011, in the **Federal Register** (76 FR 15045). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2011–0033.''

Contact Information: For further information on this decision contact Mr. George Gillespie, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5299, facsimile (202) 366–7002.

Summary of Goodyear's Petition: Affected are approximately 26,224 Goodyear Assurance ComforTred Touring passenger car replacement tires, size 215/70R15 that were manufactured between January 4, 2010 and September 11, 2010.

Goodyear explains that the noncompliance is that, due to a mold labeling error, the sidewall marking on the tires incorrectly describes the generic name of the cord material in the tread area of the tires as required by paragraph S5.5(e). Specifically, the tires in question were inadvertently manufactured with ''Tread: 1 Polyester Cord + 2 Steel Cords + 1 Polyester Cord. The labeling should have been ''Tread: 1 Polyester Cord + 2 Steel Cords + 1 Nylon Cord.''

Goodyear argues that this noncompliance is inconsequential to motor vehicle safety because while the non-compliant tires are mislabeled they meet or exceed all applicable Federal Motor Vehicle Safety Standards, the noncompliant sidewall marking does not create an unsafe condition, and all other labeling requirements have been met.

Goodyear points out that NHTSA has previously granted similar petitions for non-compliances in sidewall marking.

Goodyear additionally states that it has corrected the affected tire molds and all future production will have the correct material shown on the sidewall.

In summation, Goodyear believes that the described noncompliance of its tires to meet the requirements of FMVSS No. 139 is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, and should be granted.

NHTSA Decision: The agency agrees with Goodyear that the noncompliances are inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliances on the operational safety of vehicles on which these tires are mounted. Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires.

In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the ply material in a tire.

[1] Goodyear Tire and Rubber Company (Goodyear) is a replacement equipment manufacturer incorporated in the state of Ohio.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the 26,224 [2] tires that have already passed from the manufacturer to an owner, purchaser, or dealer.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8.

Issued on: January 12, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–933 Filed 1–18–12; 8:45 am]

BILLING CODE 4910–59–P

[2] Goodyear's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Goodyear as a replacement equipment manufacturer from the notification and recall responsibilities of 49 CFR part 573 for 26,224 of the affected tires. However, a decision on this petition cannot relieve Goodyear distributors of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Goodyear recognized that the subject noncompliance existed.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0002; Notice 1]

Dorel Juvenile Group, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of Petition.

SUMMARY: Dorel Juvenile Group, Inc.[1] (DJG) has determined that certain child restraint systems manufactured between July 20, 2010 and May 18, 2011 do not fully comply with paragraph S5.5 *Labeling of Federal Motor Vehicle Safety Standard (FMVSS) No. 213,Child Restraint Systems.* DJG has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* (dated June 23, 2011).

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), DJG has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of DJG's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 89,527 of the following models of DJG child restraint systems that were manufactured between July 20, 2010 and May 18, 2011:

22187ANL Alpha Omega Elite
22187REM Alpha Omega Elite
22187REMA Alpha Omega Elite
22187SAR Alpha Omega Elite
22187SARA Alpha Omega Elite
22465 FSM Alpha Omega Elite
22790CGT Deluxe 3 in 1
CC033BMT Alpha Omega Elite
CC043ANK Alpha Omega Elite
CC043ANL Alpha Omega Elite
CC043AQS Alpha Omega Elite
CC046AAI Deluxe 3 in 1
CC046AAU Deluxe 3 in 1
CC046CTA Deluxe 3 in 1
CC046SNW Deluxe 3 in 1
CC046WPR Deluxe 3 in 1
CC050AJH Complete Air LX
CC050ANY Complete Air LX
CC050ANZ Complete Air LX
CC050AOQ Complete Air LX
CC051AIR Complete Air SE

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the 89,527 [2] child restraint systems that DJG no longer controlled at the time it determined that the noncompliance existed.

DJG described the noncompliance as follows:

The child restraints at issue utilize a permanently attached base which are equipped with color coordinated Ease of Use labels including base labels depicting the rear-facing mode instructions. The issue is that certain restraints were equipped with base labels positioned on the incorrect side of the base. Even if the base labels are positioned on the incorrect side of the base, nearly all the information is correct, except the small indicator arrows do not line up with the rear-facing vehicle and LATCH belt path for the rear-facing mode. As noted in the Noncompliance Information Report, this voluntarily supplied information caused the installation diagram required by FMVSS 213 S5.5.2(l) to be inaccurate.

The noncompliance exists when the base labels are installed incorrectly and the indicator arrows do not point to the rear-facing vehicle belt/LATCH routing path. The arrows are actually pointing to the area below the forward-facing vehicle belt/LATCH path routing but could be construed as pointing to the forward-facing routing path.

DJG stated its belief that the likelihood a consumer would interpret the arrows as indicating the proper rear-facing path routing through the forward-facing path routing is extremely low. The proper rear-facing vehicle belt/LATCH routing path is shown very clearly in the five diagrams on the two base labels.

DJG argued that instructions included with the subject child restraint systems also correctly depict the rear-facing vehicle belt/LATCH routing path numerous times.

DJG noted that only one user complaint related to this issue had been received.

DJG also included the results of a survey conducted to illustrate any effects the noncompliance may have on seat installation.

In conclusion, DJG stated its belief that the technical noncompliance issue reported in the June 23, 2011 Noncompliance Information Report does not constitute a true safety related issue because there is no evidence that improper installation is actually taking place in the field (as evidenced by the lack of significant complaints from consumers, advocates, health care specialists or anyone else). DJG also stated that the preponderance of correct rear-facing installation diagrams and instructions appears to outweigh the potential for improper installation as a result of the ambiguous arrows on the rear-facing installation labels on the base. DJG also indicated that there appears to be a very low probability that improper installation is even possible in the vast majority of vehicles surveyed, which represent a good cross section of vehicles in the field.

[1] Dorel Juvenile Group, Inc., a division of Dorel Industries, Inc., is an Indiana company that manufactures and imports motor vehicle equipment.

[2] DJG's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt DJG as an equipment manufacturer from the notification and recall responsibilities of 49 CFR part 573 for 89,527 of the affected child restraint systems. However, a decision on this petition cannot relieve child restraint system distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant child restraint systems under their control after DJG notified them that the subject noncompliance existed.

Comments

Interested persons are invited to submit written data, views, and

arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

b. *By hand delivery to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1-(202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

DATES: *Comment closing date:* February 21, 2012.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8).

Issued on: January 12, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–936 Filed 1–18–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of One Specially Designated National or Blocked Person Pursuant to Executive Order 13315, as Amended

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of an individual whose property and interests in property have been unblocked pursuant to Executive Order 13315 of August 28, 2003, ''Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions,'' as amended by Executive Order 13350 of July 30, 2004.

DATES: The removal of this individual from the SDN List is effective as of January 10, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC are available from OFAC's web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

Background

On August 28, 2003, the President issued Executive Order 13315 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.,* the National Emergencies Act, 50 U.S.C. 1601 *et seq.,* section 5 of the United Nations Participation Act, as amended, 22 U.S.C. 287c, section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution 1483 of May 22, 2003. In the Order, the President expanded the scope of the national emergency declared in Executive Order 13303 of May 22, 2003, to address the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in that country, and the development of political, administrative, and economic institutions in Iraq. The Order blocks the property and interests in property of, *inter alia,* persons listed on the Annex to the Order.

On July 30, 2004, the President issued Executive Order 13350, which, *inter alia,* replaced the Annex to Executive Order 13315 with a new Annex that included the names of individuals and entities, including individuals and entities that had previously been designated under Executive Order 12722 and related authorities.

The Department of the Treasury's Office of Foreign Assets Control has determined that the individual identified below, whose property and interests in property were blocked pursuant to Executive Order 13315, as amended, should be removed from the SDN List.

The following designation is removed from the SDN List:

AL–HABOBI, Dr. Safa Haji J (a.k.a. AL–HABOBI, Dr. Safa; a.k.a. AL–HABUBI, Dr. Safa Hadi Jawad; a.k.a. HABUBI, Dr. Safa Hadi Jawad; a.k.a. HABUBI, Dr. Safa Jawad; a.k.a. JAWAD, Dr. Safa Hadi), Flat 4D Thorney Court, Palace Gate, Kensington, United Kingdom; Iraq; DOB 01 Jul 1946; Former Minister of Oil (individual) [IRAQ2]

The removal of this individual's name from the SDN List is effective as of January 10, 2012. All property and interests in property of the individual that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: January 9, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–960 Filed 1–18–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of One Specially Designated National or Blocked Person Pursuant to Executive Order 13315, as Amended

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of an entity whose property and interests in property have been unblocked pursuant to Executive Order 13315 of August 28, 2003, ''Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions,'' as amended by Executive Order 13350 of July 30, 2004.

DATES: The removal of this entity from the SDN List is effective as of January 10, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC are available from OFAC's web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

Background

On August 28, 2003, the President issued Executive Order 13315 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.,* the National Emergencies Act, 50 U.S.C. 1601 *et seq.,* section 5 of the United Nations Participation Act, as amended, 22 U.S.C. 287c, section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution 1483 of May 22, 2003. In the Order, the President expanded the scope of the national emergency declared in Executive Order 13303 of May 22, 2003, to address the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in that country, and the development of political, administrative, and economic institutions in Iraq. The Order blocks the property and interests in property of, *inter alia,* persons listed on the Annex to the Order.

On July 30, 2004, the President issued Executive Order 13350, which, *inter alia,* replaced the Annex to Executive Order 13315 with a new Annex that included the names of individuals and entities, including individuals and entities that had previously been designated under Executive Order 12722 and related authorities.

The Department of the Treasury's Office of Foreign Assets Control has determined that the entity identified below, whose property and interests in property were blocked pursuant to Executive Order 13315, as amended, should be removed from the SDN List.

The following designation is removed from the SDN List:

Matrix Churchill Corporation, 5903 Harper Road, Cleveland, OH 44139 [IRAQ2]

The removal of this entity's name from the SDN List is effective as of January 10, 2012. All property and interests in property of the entity that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: January 9, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–963 Filed 1–18–12; 8:45 am]

BILLING CODE 4810–AL–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments. Notice of public hearing.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the United States Sentencing Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice also sets forth a number of issues for comment, some of which are set forth together with the proposed amendments; some of which are set forth independent of any proposed amendment; and one of which (regarding retroactive application of proposed amendments) is set forth in the **SUPPLEMENTARY INFORMATION** portion of this notice.

The proposed amendments and issues for comment in this notice are as follows: (1) A proposed amendment on fraud and related offenses, including (A) An issue for comment in response to the issue of harm to the public and financial markets, as raised by each of two directives to the Commission in section 1079A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203; (B) a proposed change to § 2B1.4 (Insider Trading) to implement the directive in section 1079A(a)(1) of that Act, and related issues for comment on insider trading, securities fraud, and similar offenses; (C) proposed changes to § 2B1.1 (Theft, Property Destruction, and Fraud) regarding mortgage fraud offenses to implement the directive in section 1079A(a)(2) of that Act, and a related issue for comment on mortgage fraud and financial institution fraud; and (D) issues for comment on the impact of the loss table in § 2B1.1(b)(1) and the victims table in § 2B1.1(b)(2) in cases involving relatively large loss amounts; (2) a proposed amendment on offenses involving controlled substances and chemical precursors, including (A) an issue for comment on offenses involving N–Benzylpiperazine (BZP); and (B) a proposed change to § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy) that would create a guidelines ''safety valve'' provision for offenses involving chemical precursors that would be analogous to the provision in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy); (3) a proposed amendment on human rights offenses, including (A) a proposed guideline applicable to human rights offenses; (B) proposed changes to § 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law) and § 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport) to address cases in which the offense of conviction is for immigration or naturalization fraud but the defendant had committed a serious human rights offense; and (C) related issues for comment on human rights offenses; (4) a proposed amendment to

§ 2L1.2 (Unlawfully Entering or Remaining in the United States) to respond to a circuit conflict over application of the term ''sentence imposed'' in that guideline when the defendant's original ''sentence imposed'' was lengthened after the defendant was deported; (5) a proposed amendment presenting options for specifying the types of documents that may be considered in determining whether a particular prior conviction fits within a particular category of crimes for purposes of specific guideline provisions, and related issues for comment; (6) a proposed amendment to § 4A1.2 (Definitions and Instructions for Computing Criminal History) to respond to an application issue regarding when a defendant's prior sentence for driving while intoxicated or driving under the influence (and similar offenses by whatever name they are known) is counted toward the defendant's criminal history score; (7) a proposed amendment to § 4B1.2 (Definitions of Terms Used in Section 4B1.1) to respond to differences among the circuits on when, if at all, burglary of a non-dwelling qualifies as a crime of violence for purposes of the guidelines, and related issues for comment; (8) a proposed amendment to § 5G1.2 (Sentencing on Multiple Counts of Conviction) to respond to an application issue regarding the applicable guideline range in a case in which the defendant is sentenced on multiple counts of conviction, at least one of which involves a mandatory minimum sentence that is greater than the minimum of the otherwise applicable guideline range; (9) a proposed amendment to § 5K2.19 (Post-Sentencing Rehabilitative Efforts) to respond to *Pepper* v. *United States,* 131 S.Ct. 1229 (2011), which held, among other things, that a defendant's post-sentencing rehabilitative efforts may be considered when the defendant is resentenced after appeal; and (10) a proposed amendment in response to miscellaneous issues arising from legislation recently enacted, including (A) proposed changes to § 2P1.2 (Providing or Possessing Contraband in Prison) to respond to the Cell Phone Contraband Act of 2010, Public Law 111–225, and (B) proposed changes to Appendix A (Statutory Index) to address certain criminal provisions in the Prevent All Cigarette Trafficking Act of 2009, Public Law 111–154, the Indian Arts and Crafts Amendments Act of 2010, Public Law 111–211, the Animal Crush Video Prohibition Act of 2010, Public Law 111–294, and certain other statutes, and a related issue for comment.

DATES: (1) *Written public comment.*—Written public comment regarding the proposed amendments and issues for comment set forth in this notice, including public comment regarding retroactive application of any of the proposed amendments, should be received by the Commission not later than March 19, 2012.

(2) *Public hearing.*—The Commission plans to hold a public hearing regarding the proposed amendments and issues for comment set forth in this notice. Further information regarding the public hearing, including requirements for testifying and providing written testimony, as well as the location, time, and scope of the hearing, will be provided by the Commission on its Web site at *www.ussc.gov.*

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Public Affairs Officer, Telephone: (202) 502–4502.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The proposed amendments in this notice are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part in comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [2][4][6] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

The Commission requests public comment regarding whether, pursuant to 18 U.S.C. 3582(c)(2) and 28 U.S.C. 994(u), any proposed amendment published in this notice should be included in subsection (c) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants. The Commission lists in § 1B1.10(c) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2). The background commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(c). To the extent practicable, public comment should address each of these factors.

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's Web site at *www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure, Rule 4.4.

Patti B. Saris,

Chair.

1. Dodd-Frank/Fraud

Synopsis of Proposed Amendment: This proposed amendment is a multi-part amendment that continues the Commission's multi-year review of fraud offenses to ensure that the guidelines provide appropriate penalties (1) in cases involving securities fraud and similar offenses and (2) in cases involving mortgage fraud and financial institution fraud.

Specifically, the proposed amendment implements the two directives to the Commission in the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 (the ''Act''). The first directive relates to securities fraud and similar offenses, and the second directive relates to mortgage fraud and financial institution fraud.

Each directive requires the Commission to ''review and, if appropriate, amend'' the guidelines and policy statements applicable to the offenses covered by the directive and consider whether the guidelines

appropriately account for the potential and actual harm to the public and the financial markets from those offenses. Each directive also requires the Commission to ensure that the guidelines reflect (i) The serious nature of the offenses, (ii) the need for deterrence, punishment, and prevention, and (iii) the effectiveness of incarceration in furthering those objectives.

Part A responds to the issue of harm to financial markets, which is raised by both directives; Part B responds to the directive on securities fraud and similar offenses; and Part C responds to the directive on mortgage fraud and financial institution fraud.

The proposed amendment also includes a Part D, which responds to concerns suggesting that the impact of the loss table or the victims table (or the combined impact of the loss table and the victims table) may overstate the culpability of certain offenders in cases sentenced under § 2B1.1 that involve relatively large loss amounts.

The parts are as follows:

(A) Harm to Financial Markets

Issue for Comment:

1. The Commission requests comment on whether the *Guidelines Manual* provides penalties that appropriately account for the potential and actual harm to the public and the financial markets from the offenses covered by the directives. If not, what changes to the *Guidelines Manual* would be appropriate to respond to this requirement in both directives?

Section 2B1.1 contains provisions that address harm to the public and the financial markets in various ways, by taking into account the amount of the loss, the number of victims, and other factors contained in its specific offense characteristics and departure provisions. For example, subsection (b)(14) provides an enhancement of either (A) 2 levels, if the defendant derived more than $1,000,000 in gross receipts from one or more financial institutions, or (B) 4 levels, if the offense (i) substantially jeopardized the safety and soundness of a financial institution, (ii) substantially endangered the solvency or financial security of an organization that (I) was a publicly traded company or (II) had 1,000 or more employees, or (iii) substantially endangered the solvency or financial security of 100 or more victims. Subsection (b)(14)(C) provides that the cumulative adjustments from (b)(2) and (b)(14)(B) shall not exceed 8 levels, except as provided in subdivision (D). Subdivision (D) provides a minimum offense level of level 24, if either (A) or (B) applies.

Should the Commission amend § 2B1.1 to more directly account for the potential and actual harms to the public and the financial markets? For example, should the Commission provide a new prong in § 2B1.1(b)(14) that provides an enhancement of [2][4][6] levels if the offense involved a significant disruption of a financial market or created a substantial risk of such a disruption? In the alternative, should the Commission provide a new upward departure provision in § 2B1.1 that applies if the offense involved such a disruption or created a substantial risk of such a disruption?

If the Commission were to provide such a provision, what guidance should the Commission provide for determining when the provision would apply?

(B) Securities Fraud and Similar Offenses

Synopsis of Proposed Amendment: Section 1079A(a)(1)(A) of the Act directs the Commission to ''review and, if appropriate, amend'' the guidelines and policy statements applicable to ''persons convicted of offenses relating to securities fraud or any other similar provision of law, in order to reflect the intent of Congress that penalties for the offenses under the guidelines and policy statements appropriately account for the potential and actual harm to the public and the financial markets from the offenses.''

In addition, section 1079A(a)(1)(B) of the Act provides that, in promulgating any such amendment, the Commission shall—

(i) Ensure that the guidelines and policy statements, particularly section 2B1.1(b)(14) and section 2B1.1(b)(17) (and any successors thereto), reflect—

(I) The serious nature of the offenses described in subparagraph (A);

(II) The need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) The effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) Consider the extent to which the guidelines appropriately account for the potential and actual harm to the public and the financial markets resulting from the offenses;

(iii) Ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) Make any necessary conforming changes to guidelines; and

(v) Ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

Securities fraud is prosecuted under 18 U.S.C. 1348 (Securities and commodities fraud), which makes it unlawful to knowingly execute, or attempt to execute, a scheme or artifice (1) to defraud any person in connection with a security or (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of a security. The statutory maximum term of imprisonment for an offense under section 1348 is 25 years. Offenses under section 1348 are referenced in Appendix A (Statutory Index) to § 2B1.1.

Securities fraud is also prosecuted under 18 U.S.C. 1350 (Failure of corporate officers to certify financial reports), violations of the provisions of law referred to in 15 U.S.C. 78c(a)(47), and violations of the rules, regulations, and orders issued by the Securities and Exchange Commission pursuant to those provisions of law. *See* § 2B1.1, comment. (n.14(A)). In addition, there are cases in which the defendant committed a securities law violation but is prosecuted under a general fraud statute. In general, these offenses are likewise referenced to § 2B1.1.

The directive contemplates that the Commission also review offenses ''under any other similar provision of law''. The Commission has received comment indicating that commodities fraud offenses and insider trading offenses should be included within the scope of its review.

The proposed amendment responds to the directive by amending the insider trading guideline, § 2B1.4 (Insider Trading), in several ways.

First, it provides a specific offense characteristic that applies if the offense involved sophisticated insider trading. The specific offense characteristic provides an enhancement of [2] levels and a minimum offense level of [12][14].

Second, it provides a 4-level enhancement that applies if the defendant, at the time of the offense, held one of several listed positions of trust. This enhancement parallels the enhancement in § 2B1.1(b)(18).

Issues for comment are also provided, both on insider trading offenses under § 2B1.4 and on securities fraud and similar offenses under § 2B1.1.

Proposed Amendment:

Section 2B1.4(b) is amended by striking ''Characteristic'' and inserting ''Characteristics''; and by inserting after paragraph (1) the following:

''(2) If the offense involved sophisticated insider trading, increase by 2 levels. If the resulting offense level

is less than level [12][14], increase to level [12][14].

(3) If, at the time of the offense, the defendant was—

(A)(i) An officer or a director of a publicly traded company; (ii) a registered broker or dealer, or a person associated with a broker or dealer; or (iii) an investment adviser, or a person associated with an investment adviser; or

(B)(i) An officer or a director of a futures commission merchant or an introducing broker; (ii) a commodities trading advisor; or (iii) a commodity pool operator, increase by 4 levels.''.

The Commentary to §2B1.4 captioned ''Application Note'' is amended in the phrase ''Application Note'' by striking ''Note'' and inserting ''Notes''; by redesignating Note 1 as Note 3; in that Note, by striking ''Section 3B1.3 (Abuse of Position of Trust or Use of Special Skill)'' and inserting ''If subsection (b)(3) applies, do not apply §3B1.3. In any other case, §3B1.3''; and by striking ''trust. Examples might include a corporate president or'' and inserting ''trust, such as''.

The Commentary to §2B1.4 captioned 'Application Note' is amended by inserting before Note 3 (as so redesignated) the following:

1. *Application of Subsection (b)(2).*—For purposes of subsection (b)(2), 'sophisticated insider trading' means especially complex or intricate offense conduct pertaining to the execution or concealment of the offense.

The following is a non-exhaustive list of factors that the court shall consider in determining whether subsection (b)(2) applies:

(A) The number of transactions;

(B) The dollar value of the transactions;

(C) The number of securities involved;

(D) The duration of the offense;

(E) Whether fictitious entities, corporate shells, or offshore financial accounts were used to hide transactions; and

(F) Whether internal monitoring or auditing systems or compliance and ethics program standards or procedures were subverted in an effort to prevent the detection of the offense.

2. *Application of Subsection (b)(3).*—For purposes of subsection (b)(3): 'Commodity pool operator' has the meaning given that term in section 1a(5) of the Commodity Exchange Act (7 U.S.C. 1a(5)).

'Commodity trading advisor' has the meaning given that term in section 1a(6) of the Commodity Exchange Act (7 U.S.C. 1a(6)).

'Futures commission merchant' has the meaning given that term in section 1a(20) of the Commodity Exchange Act (7 U.S.C. 1a(20)).

'Introducing broker' has the meaning given that term in section 1a(23) of the Commodity Exchange Act (7 U.S.C. 1a(23)).

'Investment adviser' has the meaning given that term in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)).

'Person associated with a broker or dealer' has the meaning given that term in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)).

'Person associated with an investment adviser' has the meaning given that term in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)).

'Registered broker or dealer' has the meaning given that term in section 3(a)(48) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(48)).''.

Issues for Comment:

1. *Insider Trading.* The Commission has received public comment indicating that some insider trading defendants engage in serious offense conduct but nonetheless, because of market forces or other factors, do not necessarily realize high gains. The concern has been raised that in such cases, §2B1.4 may not adequately account for the seriousness of the conduct and the actual and potential harms to individuals and markets, because the guideline uses gain alone as the measure of harm.

Should the Commission provide in §2B1.4 one or more specific offense characteristics that use aggravating factors other than gain to account for the seriousness of the conduct and the actual or potential harm to individuals and markets? If so, what should the factor or factors be? For example, should the Commission provide, as an aggravating factor in §2B1.4, (i) The number of transactions; (ii) the dollar value of the transactions; (iii) the number of securities involved; or some other factor that distinguishes a defendant who engages in multiple instances or higher volumes of insider trading from a defendant who does not?

If the Commission were to provide one or more new specific offense characteristics based on such aggravating factors, what level or levels of enhancement should the Commission provide, and how should any such enhancement interact with the enhancement for gain in §2B1.4?

For example, in bid-rigging cases, the guidelines currently provide a ''volume of commerce'' enhancement in subsection (b)(2) of §2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors). That enhancement provides a tiered enhancement, ranging from 2 levels if the volume of commerce was more than $1,000,000, to 16 levels if the volume of commerce was more than $1,500,000,000. Should the Commission consider an analogous tiered enhancement (*e.g.,* based on volume of trading) for insider trading cases in §2B1.4? If so, what guidance should the Commission provide on how the volume of trading is to be determined, what volumes of trading should be used for the tiered enhancement, and what levels of enhancement should apply to the various tiers?

Similarly, §2R1.1 provides a special instruction under which the fine for an organizational defendant is calculated based on 20 percent of the volume of commerce, rather than on the pecuniary loss. *See* §2R1.1(d)(1). Should the Commission consider an analogous approach for insider trading cases in §2B1.4? In particular, should the Commission provide a special rule under which the gain enhancement in §2B1.4(b)(1) would use either the gain or an amount equal to [20] percent of the volume of trading, whichever is greater?

2. *Calculation of Loss in §2B1.1.* The Commission has received comment indicating that determinations of loss in cases under §2B1.1 involving securities fraud and similar offenses are complex and a variety of different methods are in use, resulting in application issues and possible sentencing disparities. Should the Commission amend §2B1.1 to clarify the method or methods used in determining loss in such cases to ensure that the guideline appropriately accounts for the potential and actual harm to the public and the financial markets from those offenses?

For example, courts in cases involving securities fraud and similar offenses have used—

(A) A simple rescissory method (under which loss is based upon the price that the victim paid for the security and the price of the security as it existed after the fraud was disclosed), *see, e.g., United States* v. *Grabske,* 260 F.Supp.2d 866, 872–73 (N.D. Cal. 2002);

(B) A modified rescissory method (under which loss is based upon the average price of the security during the period that the fraud occurred and the average price of the security during a set period after the fraud was disclosed to the market), *see, e.g., United States* v. *Brown,* 595 F.3d 498 (3d Cir. 2010); *United States* v. *Bakhit,* 218 F.Supp.2d 1232 (C.D. Cal. 2002);

(C) A market capitalization method (under which loss is based upon the price of the security shortly before the

disclosure and the price of the security shortly after the disclosure), *see, e.g., United States* v. *Moskowitz,* 215 F.3d 265, 272 (2d Cir. 2000), *abrogated on other grounds by Crawford* v. *Washington,* 541 U.S. 36, 64 (2002); *United States* v. *Peppel,* 2011 WL 3608139 (S.D. Ohio 2011); and

(D) A market-adjusted method (under which loss is based upon the change in value of the security, but excluding changes in value that were caused by external market forces), *see, e.g., United States* v. *Rutkoske,* 506 F.3d 170, 179 (2d Cir. 2007); *United States* v. *Olis,* 429 F.3d 540, 546 (5th Cir. 2005).

The Commission seeks comment on these four methods of calculating loss in cases involving securities fraud and similar offenses, and the relative advantages and disadvantages of these methods. The Commission also seeks comment on whether there are any other methods of calculating loss, other than these four methods, that should be used in such cases.

Should the Commission provide a specific method or methods for use by courts in determining loss in cases involving securities fraud and similar offenses? If so, which method or methods should the Commission provide? Should the method used depend on the type of fraudulent scheme, and if so, how?

In particular, two of the more common types of securities fraud are (1) investment fraud, in which victims are fraudulently induced to invest in companies or products related to securities (a category that includes Ponzi schemes); and (2) market or price manipulation fraud, in which the offender seeks to inflate the price of a security through various means (a category that includes so-called ''pump and dump'' schemes as well as accounting frauds). What method or methods of loss calculation should be used for investment fraud, and what method or methods should be used for market or price manipulation fraud? Are there any other types of securities fraud or similar offenses for which the Commission should provide a specific method or methods of loss calculation?

What changes, if any, should the Commission make to the existing rules for calculation of loss in cases involving securities fraud or similar offenses? For example, the calculation of loss in an investment fraud case is covered by Application Note 3(F)(iv) to § 2B1.1, which provides:

Ponzi and Other Fraudulent Investment Schemes.—In a case involving a fraudulent investment scheme, such as a Ponzi scheme, loss shall not be reduced by the money or the value of the property transferred to any individual investor in the scheme in excess of that investor's principal investment (*i.e.,* the gain to an individual investor in the scheme shall not be used to offset the loss to another individual investor in the scheme).

Should the Commission revise or repeal this application note and provide a different rule for investment fraud?

Should the Commission provide further guidance regarding the causation standard to be applied in calculating loss in cases involving securities fraud or similar offenses? For example, should the Commission provide a loss causation standard similar to the civil loss causation standard articulated by the Supreme Court in *Dura Pharmaceuticals, Inc.* v. *Broudo,* 544 U.S. 336 (2005) (holding that a civil securities fraud plaintiff must prove that the plaintiff's economic loss was proximately caused by the defendant's misrepresentation (or other fraudulent conduct) as opposed to other independent market factors)?

Are there any other changes that the Commission should make regarding the determination of loss in cases involving securities fraud or similar offenses to ensure that the guidelines appropriately account for the potential and actual harm to the public and the financial markets from those offenses?

3. *Specific Provisions in § 2B1.1.* The directive requires the Commission to consider, among other things, the enhancements at § 2B1.1(b)(15) and (b)(18) (formerly (b)(14) and (b)(17), respectively). The Commission seeks comment on whether any changes should be made to either or both of these provisions in response to the directive. Should the Commission expand the scope or the amounts of the increases provided by subsection (b)(15) or (b)(18), or both, to ensure that the guidelines appropriately account for the potential and actual harm to the public and the financial markets? If so, how?

(C) Mortgage Fraud and Financial Institution Fraud

Synopsis of Proposed Amendment: This part of the proposed amendment responds to the directive in section 1079A(a)(2) of the Act, which relates to mortgage fraud and financial institution fraud.

Specifically, section 1079A(a)(2)(A) of the Act directs the Commission to ''review and, if appropriate, amend'' the guidelines and policy statements applicable to ''persons convicted of fraud offenses relating to financial institutions or federally related mortgage loans and any other similar provisions of law, to reflect the intent of Congress that the penalties for the offenses under the guidelines and policy statements ensure appropriate terms of imprisonment for offenders involved in substantial bank frauds or other frauds relating to financial institutions.''

In addition, section 1079A(a)(2)(B) of the Act provides that, in promulgating any such amendment, the Commission shall—

(i) Ensure that the guidelines and policy statements reflect—

(I) The serious nature of the offenses described in subparagraph (A);

(II) The need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) The effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) Consider the extent to which the guidelines appropriately account for the potential and actual harm to the public and the financial markets resulting from the offenses;

(iii) Ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) Make any necessary conforming changes to guidelines; and

(v) Ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

With regard to mortgage fraud, the proposed amendment makes two changes to Application Note 3 regarding calculation of loss. The first change addresses the credit against loss rule and states that, in the case of a fraud involving a mortgage loan in which the collateral has been disposed of at a foreclosure sale, use the amount recovered from the foreclosure sale.

The second change specifies that, in the case of a fraud involving a mortgage loan, reasonably foreseeable pecuniary harm includes the reasonably foreseeable administrative costs to the lending institution associated with foreclosing on the mortgaged property, provided that the lending institution exercised due diligence in the initiation, processing, and monitoring of the loan and the disposal of the collateral.

With regard to financial institution fraud more generally, the proposed amendment broadens the applicability of § 2B1.1(b)(15)(B), which provides an enhancement of 4 levels if the offense involved specific types of financial harms (*e.g.,* jeopardizing a financial institution or organization). Application Note 12 to § 2B1.1 lists factors to be considered in determining whether to apply the enhancement in subsection (b)(15)(B) for jeopardizing a financial institution or organization. Currently, the court is directed to consider whether the financial institution or organization

suffered one or more listed harms (such as becoming insolvent) as a result of the offense. The proposed amendment amends Note 12 to direct the court to consider whether one of the listed harms was likely to result from the offense but did not result from the offense because of federal government intervention.

Issues for comment are also provided.

Proposed Amendment:

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 3(A)(v) by adding at the end the following:

''(IV) *Fraud Involving a Mortgage Loan.*—In the case of a fraud involving a mortgage loan, the reasonably foreseeable pecuniary harm includes the reasonably foreseeable administrative costs to the lending institution associated with foreclosing on the mortgaged property, provided that the lending institution exercised due diligence in the initiation, processing, and monitoring of the loan and the disposal of the collateral.'';

in Note 3(E)(ii) by adding at the end ''In the case of a fraud involving a mortgage loan in which the collateral has been disposed of at a foreclosure sale, use the amount recovered from the foreclosure sale.'';

in Note 12(A) by adding at the end the following:

''(v) One or more of the criteria in clauses (i) through (iv) was likely to result from the offense but did not result from the offense because of federal government intervention.'';

and in Note 12(B)(ii) by inserting at the end the following:

''(VII) One or more of the criteria in subclauses (I) through (VI) was likely to result from the offense but did not result from the offense because of federal government intervention.''.

Issue for Comment:

1. The Commission requests comment regarding whether the *Guidelines Manual* provides penalties for mortgage fraud and financial institution fraud that appropriately account for the potential and actual harm to the public and the financial markets from these offenses and ensure appropriate terms of imprisonment for offenders involved in substantial bank frauds or other frauds relating to financial institutions and, if not, what changes to the *Guidelines Manual* would be appropriate to respond to section 1079A(a)(2) of the Act.

Bank fraud is prosecuted under 18 U.S.C. 1344 (Bank fraud), which makes it unlawful to knowingly execute a scheme or artifice (1) to defraud a financial institution or (2) to obtain any of the property of a financial institution by means of false or fraudulent pretenses, representations, or promises. The statutory maximum term of imprisonment for an offense under section 1344 is 30 years. Offenses under section 1344 are referenced in Appendix A (Statutory Index) to § 2B1.1. Other statutes relating to financial institution fraud or mortgage fraud include 18 U.S.C. 215, 656, 657, 1005, 1006, 1010, 1014, 1029, and 1033. These offenses are likewise generally referenced to § 2B1.1.

A. Proposed Provisions

The proposed amendment would make two changes regarding calculation of loss in mortgage fraud cases. The Commission invites comment on whether there are other issues involving loss in mortgage fraud cases that are not adequately accounted for in the guidelines and, if so, what changes should be made to how loss is calculated in mortgage fraud cases.

For example, the first change would specify that in the case of a fraud involving a mortgage loan in which the collateral was disposed of at a foreclosure sale, use the amount recovered from the foreclosure sale. Should the Commission provide an additional special rule for determining fair market value if the mortgaged property has not been disposed of by the time of sentencing? For example, should the Commission provide that, if the mortgaged property has not been disposed of by that time, the most recent tax assessment value of the mortgaged property shall constitute prima facie evidence of the fair market value, *i.e.,* is evidence sufficient to establish the fair market value, if not rebutted?

The proposed amendment would also expand the scope of § 2B1.1(b)(15) by amending the commentary to provide additional factors for the court to consider in determining whether one or more prongs of subsection (b)(15) apply. The Commission invites comment on whether it should make any further changes to subsection (b)(15), such as by expanding its scope or increasing its penalties, or both, to ''ensure appropriate terms of imprisonment for offenders involved in substantial bank frauds or other frauds relating to financial institutions''. If so, what changes to subsection (b)(15) should be made?

B. Mitigating Factors

Are there mitigating factors in cases involving mortgage fraud or financial fraud that are not adequately accounted for in the guidelines? If so, how should the Commission amend the *Guidelines Manual* to account for those mitigating factors?

(D) Impact of Loss and Victims Tables in Certain Cases

Issues for Comment:

1. The Commission has observed that cases sentenced under § 2B1.1 involving relatively large loss amounts have relatively high rates of below-range sentences (both government sponsored and non-government sponsored), particularly in the context of securities fraud and similar offenses. The Commission also has received public comment and reviewed judicial opinions suggesting that the impact of the loss table or the victims table (or the combined impact of the loss table and the victims table) may overstate the culpability of certain offenders in such cases.

In response to these concerns, the Commission is studying whether it should limit the impact of the loss table or the victims table (or both) in cases sentenced under § 2B1.1 involving relatively large loss amounts and, if so, how it should limit the impact.

In particular, the Commission seeks comment on whether one or more of the following approaches should be adopted:

(A) *Limiting Impact of Loss Table if the Defendant Had Relatively Little Gain Relative to the Loss.* Should the Commission insert a new specific offense characteristic in § 2B1.1 to limit the impact of the loss table in cases involving large loss amounts if the defendant had relatively little gain relative to the loss? Examples of such a provision are the following:

(Ex. 1) If the defendant's gain resulting from the offense did not exceed $10,000, the adjustment from application of subsection (b)(1) shall not exceed [14]/[16] levels.

(Ex. 2) If the defendant's gain resulting from the offense did not exceed $25,000, the adjustment from application of subsection (b)(1) shall not exceed [16]/[18] levels.

(Ex. 3) If the defendant's gain resulting from the offense did not exceed $70,000, the adjustment from application of subsection (b)(1) shall not exceed [18]/[20] levels.

The maximum gain amount in the examples corresponds to one percent of the maximum loss amount. For example, in Example 3, the maximum gain amount is $70,000, which corresponds to a maximum loss amount of $7,000,000. (A loss amount of $7,000,000, in turn, corresponds to an enhancement of 18 levels, while a loss amount of more than $7,000,000 corresponds to an enhancement of 20 levels.)

(B) *Limiting Impact of Victims Table if No Victims Were Substantially Harmed by the Offense.* Should the Commission amend the victims table in § 2B1.1(b)(2) to limit the impact of the

victims table if no victims were substantially harmed by the offense? For example, should the Commission provide that the 4-level and 6-level prongs of the victims table apply only if the offense substantially endangered the solvency or financial security of at least one victim?

(C) *Limiting Cumulative Impact of Loss Table and Victims Table.* Should the Commission limit the cumulative impact of the loss table and the victims table? For example, should the Commission provide that, if the enhancement under the loss table is [14]–[24] levels, do not apply the 4-level or 6-level adjustment under the victims table?

The Commission seeks comment on these three approaches. The Commission also seeks comment on whether it should modify one or more of these approaches to take the form of departure provisions rather than specific offense characteristics. Finally, the Commission seeks comment on any other approaches that would address the impacts of the loss table and the victims table in a manner that ensures they are consistent with the purposes of sentencing.

2. If the Commission were to limit the impacts of the loss table or the victims table, or both, should the limitation apply in all cases sentenced under '2B1.1, or only in a subset of such cases (*e.g.,* only in securities fraud cases)?

3. Many guidelines refer to the loss table in § 2B1.1, such as § 2B5.3 (Criminal Infringement of Copyright or Trademark), § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), and § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived From Unlawful Activity). Other guidelines maintain a certain proportionality with the fraud guideline even though they do not refer directly to the loss table in § 2B1.1, such as guidelines that use the tax table in § 2T4.1. If the Commission were to limit the impacts of the loss table or the victims table, or both, in § 2B1.1, what changes, if any, should the Commission make to other guidelines for proportionality?

2. Drugs

Synopsis of Proposed Amendment: This proposed amendment contains two parts, each of which involves drug offenses.

Part A sets forth detailed issues for comment regarding offenses involving N-Benzylpiperazine (BZP) and whether the Commission should amend the guidelines applicable to offenses involving BZP, such as by providing a specific reference for BZP in the Drug Quantity Table in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy). Among other things, the issues for comment ask whether the Commission should base the penalties for BZP on the penalties for MDMA (Ecstasy), on the penalties for amphetamine, or on some other basis.

Part B sets forth a proposed amendment that would create a ''safety valve'' provision in the guideline for chemical precursors, § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), that parallels the ''safety valve'' provision in § 2D1.1. The proposed amendment adds a new specific offense characteristic at § 2D1.11(b)(6) and a corresponding new application note. Under the proposed amendment, certain first-time, nonviolent offenders sentenced under the chemical precursor guideline, § 2D1.11, would be eligible to receive the same 2-level ''safety valve'' reduction (and using the same five ''safety valve'' criteria) as such offenders are eligible to receive under § 2D1.1.

The two parts are as follows:

(A) BZP

Issues for Comment:

1. The Commission seeks comment regarding whether the Commission should amend the guidelines applicable to offenses involving BZP, such as by providing a specific reference for BZP in the Drug Quantity Table in § 2D1.1.

Offenses involving BZP represent a very small but increasing proportion of the federal caseload. Courts have reached different conclusions about what the marijuana equivalency for BZP should be, and those differences may be resulting in unwarranted sentencing disparities. The Commission has received several requests to address BZP offenses, including a request from the Second Circuit in *United States* v. *Figueroa,* 647 F.3d 466 (2d Cir. 2011) (''inasmuch as the parties inform us that use of BZP, alone and in combination with other substances, to mimic the effects of other narcotics is increasingly prominent in certain parts of this Circuit, we direct the Clerk of the Court to forward a certified copy of this opinion to the Chairperson and Chief Counsel of the United States Sentencing Commission for whatever consideration they may deem appropriate'').

The *Guidelines Manual* does not provide a specific reference for BZP in the Drug Quantity Table in § 2D1.1 and does not provide a marijuana equivalency for BZP in the Drug Equivalency Table in Application Note 10(D) to § 2D1.1. Accordingly, guideline penalties for offenses involving BZP are determined under Application Note 5 to § 2D1.1, which directs the court to determine the base offense level using the marijuana equivalency of the ''most closely related controlled substance'' referenced in the guideline. In determining the most closely related substance, the court shall, to the extent practicable, consider the following:

(A) Whether the controlled substance not referenced in this guideline has a chemical structure that is substantially similar to a controlled substance referenced in this guideline.

(B) Whether the controlled substance not referenced in this guideline has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance referenced in this guideline.

(C) Whether a lesser or greater quantity of the controlled substance not referenced in this guideline is needed to produce a substantially similar effect on the central nervous system as a controlled substance referenced in this guideline.

See § 2D1.1, comment. (n.5).

District courts have suggested that the substance most closely related to BZP may be amphetamine, *see United States* v. *Rose,* 722 F.Supp.2d 1286, 1289 (M.D.Ala. 2010) (''BZP on its own may arguably be most similar to amphetamine''), or methylphenidate (Ritalin), *see United States* v. *Beckley,* 715 F.Supp.2d 743, 748 (E.D.Mich. 2010) (stating that, if the issue of BZP alone were before the court, ''it would be obliged to conclude that the most closely related controlled substance * * * is methylphenidate''). However, the Eighth Circuit has upheld a district court's conclusion that BZP is most closely related to MDMA. *See United States* v. *Bennett,* __ F.3d __, 2011 WL 4950051 (8th Cir. 2011).

A. In General

The Commission invites general comment on BZP offenses and BZP offenders and how these offenses and offenders compare with other drug offenses and drug offenders. For example, how is BZP manufactured? How is it distributed and marketed? How is it possessed and used? What are the characteristics of the offenders involved in these various activities? What harms are posed by these activities?

B. Chemical Structure

Is the chemical structure of BZP substantially similar to the chemical structure of a controlled substance referenced in § 2D1.1? If so, to what substance?

C. Effect on Central Nervous System, and Relative Potency

Is the effect on the central nervous system of BZP a stimulant, depressant, or hallucinogenic effect? Is that effect substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance referenced in § 2D1.1? If so, to what substance? Is the quantity of BZP needed to produce that effect lesser or greater than the quantity needed of the other such substance? If so, what is the difference in relative potency?

The Drug Enforcement Administration has described BZP as a stimulant that is 10 to 20 times less potent than amphetamine. See 75 FR 47451 (August 6, 2010) (''BZP is about 20 times less potent than amphetamine in producing [effects similar to amphetamine]. However, in subjects with a history of amphetamine dependence, BZP was found to be about 10 times less potent than amphetamine.''). The Commission invites comment on this description. If this description is accurate, should the Commission provide a marijuana equivalency for BZP on this basis, *e.g.,* by specifying a marijuana equivalency for BZP equal to one-tenth or one-twentieth of the marijuana equivalency for amphetamine? In particular, under the Drug Equivalency Table, 1 gram of amphetamine is equivalent to 2 kilograms of marijuana. Should the Commission specify a marijuana equivalency for BZP such that 1 gram of BZP is equivalent to one-tenth or one-twentieth of this, *i.e.,* 200 or 100 grams of marijuana? If not, what should the Commission specify as the marijuana equivalency for BZP?

2. There have been cases in which the offense involved BZP in combination with another controlled substance (such as MDMA), with non-controlled substances (such as TFMPP or caffeine), or both, in various proportions.

Courts have recognized that distinctions between BZP alone and BZP in combination with other substances may be appropriate. For example, the Second Circuit in *United States* v. *Chowdhury,* 639 F.3d 583 (2d Cir. 2011), upheld a determination that BZP in combination with TFMPP is most closely related to MDMA, but in *United States* v. *Figueroa,* 647 F.3d 466 (2d Cir. 2011), remanded a determination that BZP alone is most closely related to MDMA, finding *Chowdhury* not applicable and the record otherwise insufficient. *See id.* at 470 (''Although we certainly do not foreclose the determination that MDMA is the appropriate substitute for BZP alone, in the absence of an evidentiary hearing to determine the nature of the mixture, its chemical structure, and its intended neurological effects, the record on appeal does not permit us to determine whether the proper substitute is amphetamine * * *, MDMA, or another substance on the Drug Equivalency Table * * *'').

Should the guidelines make distinctions between offenses involving BZP alone and BZP in combination with other substances? If so, what distinctions should be made? Are there particular combinations involving BZP that should be specifically accounted for in the guidelines and, if so, what are the combinations and how should the guidelines account for them?

What controlled substance or substances are most closely related to BZP in combination with these various other substances? What marijuana equivalency or equivalencies should be provided for offenses involving BZP under these various circumstances?

The tendency of the courts appears to be to follow an approach under which the BZP combination is most closely related to MDMA (but possibly at reduced potency). The Commission invites comment on this approach. If this approach is appropriate, should the Commission provide a marijuana equivalency for BZP combinations on this basis, *e.g.,* by specifying a marijuana equivalency for BZP in combination with other substances that is equal to the marijuana equivalency for MDMA (but possibly at reduced potency)? In particular, under the Drug Equivalency Table, 1 gram of MDMA is equivalent to 500 grams of marijuana. Should the Commission specify a marijuana equivalency for BZP in combination with other substances such that 1 gram of BZP is equivalent to 500 grams of marijuana? Or should the Commission specify an equivalency lower than 500 grams to account for the possible reduced potency?

3. What, if any, other considerations should the Commission take into account in determining how, if at all, the guidelines should be amended as they apply to offenses involving BZP?

(B) ''Safety Valve'' Provision in § 2D1.11

Proposed Amendment:

Section 2D1.11(b) is amended by adding at the end the following:

''(6) If the defendant meets the criteria set forth in subdivisions (1)–(5) of subsection (a) of '5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease by 2 levels.''.

The Commentary to § 2D1.11 captioned ''Application Notes'' is amended by adding at the end the following:

''9. *Applicability of Subsection (b)(6).*—The applicability of subsection (b)(6) shall be determined without regard to the offense of conviction. If subsection (b)(6) applies, § 5C1.2(b) does not apply. *See* § 5C1.2(b)(2) (requiring a minimum offense level of level 17 if the 'statutorily required minimum sentence is at least five years').''.

3. Human Rights

Synopsis of Proposed Amendment: This proposed two-part amendment is a continuation of the Commission's multi-year review to ensure that the guidelines provide appropriate guidelines penalties for cases involving human rights violations.

A. Human Rights Offenses

Part A of the proposed amendment addresses cases in which the defendant is convicted of an offense that Congress has indicated is a ''serious human rights offense,'' *i.e.*, an offense under 18 U.S.C. 1091 (Genocide), 2340A (Torture), 2441 (War crimes), and 2442 (Recruitment or use of child soldiers). *See* 28 U.S.C. 509B(e). Such offenses are currently accounted for in the guidelines as follows:

(1) *Genocide.* Section 1091 offenses apply to a range of conduct committed ''with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group''. *See* 18 U.S.C. 1091(a). The range of conduct includes (i) Killing members of the group; (ii) causing serious bodily injury to members of the group; (iii) causing permanent impairment of the mental faculties of members of the group (*e.g.*, by drugs or torture); (iv) subjecting the group to conditions of life that are intended to cause the physical destruction of the group; (v) imposing measures intended to prevent births within the group; and (vi) transferring by force children of the group to another group. *Id.* The statutory maximum term of imprisonment is 20 years, or life imprisonment if the conduct involved killing and death resulted. *See* 18 U.S.C. 1091(b). In addition, section 1091(c) makes it a crime to ''directly and publicly incite[] another'' to violate section 1091(a); the statutory maximum term of imprisonment for this offense is 5 years. *See* 18 U.S.C. 1091(c). Section 1091 offenses are referenced in Appendix A (Statutory Index) to § 2H1.1 (Civil Rights).

(2) *Torture.* Section 2340A offenses apply to whoever commits or attempts to commit

torture (as defined in 18 U.S.C. 2340). The statutory maximum term of imprisonment is 20 years, or any term of years or life if death resulted. *See* 18 U.S.C. 2340A(a). Section 2340A offenses are referenced in Appendix A to §§ 2A1.1 (First Degree Murder), 2A1.2 (Second Degree Murder), 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder), 2A2.2 (Aggravated Assault), and 2A4.1 (Kidnapping, Abduction, Unlawful Restraint).

(3) *War Crimes.* Section 2441 offenses apply to a range of conduct that constitute a war crime (as defined in 18 U.S.C. 2441(c)). The range of conduct includes (i) Torture; (ii) cruel or inhuman treatment; (iii) performing biological experiments; (iv) murder; (v) mutilation or maiming; (vi) intentionally causing serious bodily injury; (vii) rape; (viii) sexual assault or abuse; and (ix) taking hostages. The statutory maximum term of imprisonment is any term of years or life. *See* 18 U.S.C. 2441(a). Section 2441 offenses are not referenced in Appendix A.

(4) *Child Soldiers.* Section 2442 offenses apply to whoever knowingly (1) recruits, enlists, or conscripts a child (*i.e.,* a person under 15 years of age) to serve in an armed force or group or (2) uses a child to participate actively in hostilities. *See* 18 U.S.C. 2442(a). The statutory maximum term of imprisonment is 20 years, or any term of years or life if death resulted. *See* 18 U.S.C. 2442(b). Section 2442 offenses are referenced in Appendix A to § 2H4.1 (Peonage, Involuntary Servitude, Slave Trade, and Child Soldiers).

The proposed amendment provides two options for cases in which the defendant is convicted of such an offense.

Option 1 establishes a new Chapter Two offense guideline, at § 2H5.1 (Human Rights). The new offense guideline reflects a consolidation into a single guideline of the various base offense levels and specific offender characteristics that are involved in the guidelines that currently account for these offenses. The new offense guideline contains alternative base offense levels of [18] if the defendant is convicted of the offense of incitement to genocide (which generally has a statutory maximum term of imprisonment of 5 years) and [24] otherwise. The guideline also contains enhancements that apply if any victim sustained serious bodily injury (2 to 4 levels); if any victim was sexually exploited (6 to 10 levels); if any victim was abducted, involuntarily detained, or held in a condition of servitude (6 to 10 levels); if the number of victims was [10][50] or more (2 levels); if death resulted; or if the defendant was a public official [or military official] or the offense was committed under color of law [or color of military authority].

Option 1 also amends Appendix A (Statutory Index) to reference each of these offenses of conviction to the new guideline and makes conforming changes to other offense guidelines.

Option 2 establishes a new Chapter Three adjustment, at § 3A1.5 (Human Rights), that applies if the defendant [was convicted of]/[committed] a serious human rights offense. The proposed guideline provides an enhancement of [4]–[12] levels and a minimum offense level of [24]–[32]. The proposed guideline also requires that the defendant be placed in Criminal History Category [V][VI].

B. Immigration and Naturalization Offenses Involving Serious Human Rights Offenses

Part B of the proposed amendment addresses cases in which the offense of conviction is for immigration or naturalization fraud but the defendant had committed a serious human rights offense. Immigration and naturalization frauds are referenced in Appendix A to § 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law) or § 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport), depending on the offense of conviction.

The proposed amendment adds a new specific offense characteristic to both guidelines. The new specific offense characteristic provides an enhancement of [10]–[18] levels if the offense reflected an effort to avoid detection or responsibility for a serious human rights offense.

Part C of the proposed amendment sets forth issues for comment on human rights offenses.

(A) Human Rights Offenses

Proposed Amendment:

Option 1:

Chapter 2, Part H is amended in the heading by adding at the end ''AND HUMAN RIGHTS''.

Chapter 2, Part H is amended by adding at the end the following:

''5. HUMAN RIGHTS

§ 2H5.1. *Human Rights*

(a) Base Offense Level:

(1) [24], except as provided below;

(2) [18], if the defendant is convicted of an offense under 18 U.S.C. § 1091(c).

(b) Specific Offense Characteristics

(1) (A) If any victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) if any victim sustained serious bodily injury, increase by 2 levels; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels.

(2) (A) If any victim was sexually exploited, increase by 6 levels; (B) if any such victim had not attained the age of sixteen years, increase by 8 levels; or (C) if any such victim had not attained the age of twelve years, increase by 10 levels.

(3) (A) If any victim was abducted, involuntarily detained, or held in a condition of servitude, increase by 6 levels; (B) if any such victim continued to be so detained or held for at least 30 days, increase by 8 levels; or (C) if any such victim continued to be so detained or held for at least 180 days, increase by 10 levels.

(4) If the number of victims described in subdivisions (1) through (3) was [10][50] or more, increase by [2][4] levels.

(5) If death resulted, increase to the greater of:

(A) 2 plus the offense level as determined above; or

(B) 2 plus the offense level from the most analogous guideline from Chapter Two, Part A, Subpart 1 (Homicide).

(6) If (A) the defendant was a public official [or military official] at the time of the offense; or (B) the offense was committed under color of law [or color of military authority], increase by 6 levels.

Commentary

Statutory Provisions: 18 U.S.C. 1091, 2340A, 2441, and 2442.

Application Notes:

1. *Definitions.*—For purposes of this guideline—

Definitions of 'serious bodily injury' and 'permanent or life-threatening bodily injury' are found in the Commentary to § 1B1.1 (Application Instructions). However, for purposes of this guideline, 'serious bodily injury' means conduct other than criminal sexual abuse, which is taken into account in the specific offense characteristic under subsection (b)(2).

'Sexually exploited' includes offenses set forth in 18 U.S.C. 2241–2244, 2251, and 2421–2423.

2. *Interaction With § 3A1.1 (Hate Crime Motivation or Vulnerable Victim).*—

(A) *Hate Crime Motivation (§ 3A1.1(a)).*—If the finder of fact at trial or, in the case of a plea of guilty or *nolo contendere,* the court at sentencing determines beyond a reasonable doubt that the defendant intentionally selected any victim or any property as the object

of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation of any person, an additional 3-level enhancement from § 3A1.1(a) will apply. An adjustment from § 3A1.1(a) will not apply, however, if a 6-level adjustment from § 2H5.1(b)(6) applies.

(B) *Vulnerable Victim (§ 3A1.1(b)).*—The base offense level does not incorporate the possibility that a victim of the offense was a vulnerable victim for purposes of § 3A1.1(b). Therefore, an adjustment under '3A1.1(b) would apply, for example, in a case in which the defendant recruited or used child soldiers (*see* 18 U.S.C. 2442) or transferred by force children of a national, ethnic, racial, or religious group (*see* 18 U.S.C. 1091(a)(5)).

3. *Interaction with § 3A1.3 (Restraint of Victim).*—If subsection (b)(3) applies, do not apply § 3A1.3 (Restraint of Victim).

4. *Interaction With § 3B1.3 (Abuse of Position of Trust or Use of Special Skill.*—If subsection (b)(6) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: This guideline covers a range of conduct considered to be serious human rights offenses, including genocide, war crimes, torture, and the recruitment or use of child soldiers. *See generally* 28 U.S.C. 509B(e).''.

The Commentary to § 2A1.1 captioned ''Statutory Provisions'' is amended by striking '', 2340A''.

The Commentary to § 2A1.2 captioned ''Statutory Provisions'' is amended by striking '', 2340A''.

The Commentary to § 2A2.2 captioned ''Statutory Provisions'' is amended by striking '', 2340A''.

The Commentary to § 2A4.1 captioned ''Statutory Provisions'' is amended by striking '', 2340A''.

The Commentary to § 2H1.1 captioned ''Statutory Provisions'' is amended by striking '', 1091''.

Chapter 2, Part H, Subpart 4 is amended in the heading by striking ''SLAVE TRADE, AND CHILD SOLDIERS'' and inserting ''AND SLAVE TRADE''.

Section 2H4.1 is amended in the heading by striking ''*Slave Trade, and Child Soldiers*'' and inserting ''*and Slave Trade*''.

The Commentary to § 2H4.1 captioned ''Statutory Provisions'' is amended by striking '', 2442''.

The Commentary to § 2H4.1 captioned ''Application Notes'' is amended in the sentence beginning '''Peonage or involuntary servitude''' by striking '', slavery, and recruitment or use of child soldiers'' and inserting ''and slavery''.

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. 1091 by striking ''2H1.1'' and inserting ''2H5.1''; in the line referenced to 18 U.S.C. 2340A by striking ''2A1.1, 2A1.2, 2A2.1, 2A2.2, 2A4.1'' and inserting ''2H5.1''; after the line referenced to 18 U.S.C. 2425 by inserting the following:

''18 U.S.C. 2441 2H5.1'';

and in the line referenced to 18 U.S.C. 2442 by striking ''2H4.1'' and inserting ''2H5.1''.

Option 2:

Chapter 3, Part A, Subpart 1 is amended by adding at the end the following:

''§ 3A1.5. *Serious Human Rights Offense*

(a) If the defendant [was convicted of]/[committed] a serious human rights offense, increase by [4]–[12] levels; but if the resulting offense level is less than level [24]–[32], increase to level [24]–[32].

(b) In each such case, the defendant's criminal history category from Chapter Four (Criminal History and Criminal Livelihood) shall be [not lower than Category V][Category VI].

Commentary

Application Notes:

1. *'Serious Human Rights Offense'.*—For purposes of this guideline, 'serious human rights offense' means violations of federal criminal laws relating to genocide, torture, war crimes, and the use or recruitment of child soldiers under sections 1091, 2340, 2340A, 2441, and 2442 of title 18, United States Code. *See* 28 U.S.C. § 509B(e).

2. *Computation of Criminal History Category.*—Under subsection (b), if the defendant's criminal history category as determined under Chapter Four (Criminal History and Criminal Livelihood) is less than Category [V][VI], it shall be increased to Category [V][VI].''.

(B) Immigration and Naturalization Offenses Involving Serious Human Rights Offenses

Proposed Amendment:

Section 2L2.1(b) is amended by adding at the end the following:

''(6) If the offense reflected an effort to avoid detection or responsibility for a serious human rights offense, increase by [10]–[18] levels.''.

The Commentary to § 2L2.1 captioned ''Application Notes'' is amended in Note 1 by adding at the end the following:

'' 'Serious human rights offense' means violations of federal criminal laws relating to genocide, torture, war crimes, and the use or recruitment of child soldiers under sections 1091, 2340, 2340A, 2441, and 2442 of title 18, United States Code. *See* 28 U.S.C. § 509B(e).''.

Section 2L2.2(b) is amended by adding at the end the following:

''(4) If the offense reflected an effort to avoid detection or responsibility for a serious human rights offense, increase by [10]–[18] levels.''.

The Commentary to § 2L2.2 captioned ''Application Notes'' is amended by redesignating Notes 4 and 5 as Notes 5 and 6, respectively, and by inserting after Note 3 the following:

''4. *Application of Subsection (b)(4).*—For purposes of subsection (b)(4), 'serious human rights offense' means violations of federal criminal laws relating to genocide, torture, war crimes, and the use or recruitment of child soldiers under sections 1091, 2340, 2340A, 2441, and 2442 of title 18, United States Code. *See* 28 U.S.C. § 509B(e).'';

(C) Issues for Comment

Issues for Comment:

1. The Commission invites general comment on human rights offenses and human rights offenders and how these offenses and offenders compare with other offenses and offenders. For example, what activities are involved in human rights offenses? What are the characteristics of the offenders involved in these activities? What harms are posed by these activities?

2. Do the guidelines provide appropriate guidelines penalties for cases involving human rights offenses? If not, what amendments are appropriate to ensure that the guidelines provide appropriate guidelines penalties for such cases? What penalty structure or structures should the guidelines provide for human rights offenses, and what penalty levels should the Commission provide? In considering whether the penalty levels and penalty structures for human rights offenses are appropriately proportional to other offenses, what are the other offenses to which the human rights offenses should be compared?

In addition, the Commission seeks comment on whether Option 1 or Option 2 of Part A of the proposed amendment would provide appropriate guidelines penalties for cases involving human rights offenses. Should the Commission adopt Option 1 or Option 2, or neither?

Are there particular changes to the penalty levels in Option 1 that should be made? Are the alternative base offense levels appropriate, or should they be raised or lowered? Are the levels provided by the specific offense

characteristics appropriate, or should they be raised or lowered? Should the Commission revise Option 1 to provide cross-references to any other Chapter Two offense guidelines?

Option 1 specifies the manner in which the new guideline would interact with certain Chapter Three adjustments. Are there particular changes that should be made to Option 1 to change how the new guideline would interact with the various Chapter Three adjustments?

3. The Commission seeks comment on what guidance should be given to courts in determining whether a particular offense is, or is not, a human rights offense for purposes of Parts A and B of the proposed amendment. Parts A and B would apply only to the offenses defined as ''serious human rights offenses'' in 28 U.S.C. 509B(e), which includes genocide, war crimes, torture, and the recruitment or use of child soldiers. Should the Commission add other offenses or categories of offenses and, if so, what offenses or categories of offenses?

4. The Commission seeks comment on aggravating and mitigating circumstances in cases involving human rights offenses. In particular:

A. Direct Prosecution of Human Rights Offenses

In cases in which the defendant is directly prosecuted for a human rights offense, are there aggravating and mitigating circumstances that should be taken into account in establishing what level of enhancement should apply, what minimum offense level should apply, and what Criminal History Category should apply? If so, what are the circumstances, and how should they be taken into account in the guidelines?

B. Immigration and Naturalization Fraud Involving Human Rights Offenses

In cases in which the defendant is convicted of an immigration or naturalization fraud involving a human rights offense, are there aggravating and mitigating circumstances that should be taken into account in establishing what level of enhancement should apply and what minimum offense level should apply? If so, what are the circumstances, and how should they be taken into account in the guidelines?

For example, there appear to be cases in which the defendant is convicted of an immigration or naturalization fraud and the evidence is sufficient to establish (1) That the defendant concealed the defendant's membership in a foreign military or paramilitary organization and (2) that the organization was involved in a human rights violation, but the evidence is not sufficient to establish (3) that the defendant was involved in the human rights violation. In such a case, should the establishment of (1) and (2) (or, in the alternative, of (1) alone) be an aggravating factor in the guidelines, warranting an enhancement or an upward departure provision?

The enhancements in Part B of the proposed amendment bracket a range of penalty levels, from [10] to [18]. Should the Commission provide a tiered enhancement, with different levels of enhancement based on different aggravating or mitigating circumstances? For example, should an enhancement of 10 levels apply in certain cases, and an enhancement of 18 levels apply in certain other cases? If so, what aggravating or mitigating circumstances should the Commission provide, and what levels should apply?

C. Amnesty

How, if at all, should the guidelines account for circumstances in which the defendant committed a human rights offense but received amnesty (or some similar mitigating measure) in the country where the conduct occurred? Should such a circumstance warrant a reduction or a downward departure?

4. ''Sentence Imposed'' in § 2L1.2

Synopsis of Proposed Amendment: This proposed amendment responds to a circuit conflict over application of the term ''sentenced imposed'' in § 2L1.2 (Unlawfully Entering or Remaining in the United States) when the defendant's original ''sentence imposed'' was lengthened after the defendant was deported.

Section 2L1.2(b)(1) provides an enhancement if the defendant previously was deported, or unlawfully remained in the United States, after a conviction for a felony drug trafficking offense. The level of the enhancement depends on the ''sentence imposed'' for the felony drug trafficking offense. Specifically:

(1) if the ''sentence imposed'' exceeded 13 months, the enhancement is 16 or 12 levels, depending on whether the conviction receives criminal history points. *See* § 2L1.2(b)(1)(A); and

(2) if the ''sentence imposed'' was 13 months or less, the enhancement is 12 or 8 levels, depending on whether the conviction receives criminal history points. *See* § 2L1.2(b)(1)(B).

The term ''sentence imposed'' is defined in Application Note 1(B)(vii) as follows:

> ''Sentence imposed'' has the meaning given the term ''sentence of imprisonment'' in Application Note 2 and subsection (b) of § 4A1.2 (Definitions and Instructions for Computing Criminal History), without regard to the date of the conviction. The length of the sentence imposed includes any term of imprisonment given upon revocation of probation, parole, or supervised release.

The conflict arises when the defendant was sentenced on two or more different occasions for the same drug trafficking conviction (*e.g.,* because of a revocation of supervision), such that there was a sentence imposed before the defendant's deportation and another, longer sentence imposed after the deportation.

The Fifth, Seventh, and Eleventh Circuits have held that the later, higher sentence does not apply for purposes of the enhancement in § 2L1.2(b)(1). *See United States* v. *Lopez,* 634 F.3d 948 (7th Cir. 2011); *United States* v. *Guzman-Bera,* 216 F.3d 1019 (11th Cir. 2000); *United States* v. *Bustillos-Pena,* 612 F.3d 863 (5th Cir. 2010). These cases generally reason that there is a ''temporal restriction'' inherent in the enhancement and conclude that the ''sentence imposed'' is determined as of when the defendant was deported or unlawfully remained in the United States. *See, e.g., Lopez,* 634 F.3d at 950.

The Second Circuit has held otherwise, concluding that the later, higher sentence does apply. *See United States* v. *Compres-Paulino,* 393 F.3d 116 (2d Cir. 2004). According to the Second Circuit, the enhancement requires only that the conviction have occurred, not that the sentence also be imposed, as of when the defendant was deported or unlawfully remained in the United States. For the Second Circuit, any ''amended sentence, whenever imposed, relates back to this conviction'' and is covered by the enhancement. *See id.* at 118.

The proposed amendment resolves the conflict by amending the definition of ''sentence imposed'' in Application Note 1(B)(vii). Two bracketed options are presented. The first option follows the approach of the Fifth, Seventh, and Eleventh Circuits and specifies that a post-revocation sentence increase is included, ''but only if the revocation occurred before the defendant was deported or unlawfully remained in the United States''. The second option follows the approach of the Second Circuit and specifies that a post-revocation sentence increase is included, ''without regard to whether the revocation occurred before or after the defendant previously was deported or unlawfully remained in the United States''.

Proposed Amendment:

The Commentary to § 2L1.2 captioned ''Application Notes'' is amended in

Note 1(B)(vii) by inserting before the period at the end the following:

''[, but only if the revocation occurred before the defendant was deported or unlawfully remained in the United States][, without regard to whether the revocation occurred before or after the defendant was deported or unlawfully remained in the United States]''.

5. Categorical Approach

Synopsis of Proposed Amendment: This proposed amendment presents options for specifying the types of documents that may be considered in determining whether a particular prior conviction fits within a particular category of crimes for purposes of specific guidelines provisions (*e.g.,* determining whether a defendant's prior conviction for nonresidential burglary under a particular state statute qualifies as an ''aggravated felony'' for purposes of § 2L1.2(b)(1)(C)).

A number of guidelines and statutes contain provisions that use a prior conviction as an aggravating factor if the prior conviction fits within a particular category of crimes. Two Supreme Court decisions, *Taylor* v. *United States,* 495 U.S. 575 (1990), and *Shepard* v. *United States,* 544 U.S. 13 (2005), set forth a ''categorical approach'' for determining whether a particular prior conviction fits within a particular category of crimes.

Taylor holds that, in making such a determination, a sentencing court may ''look only to the fact of conviction and the statutory definition of the prior offense.'' *Taylor,* 495 U.S. at 602. Because the court is not concerned with the ''facts underlying the prior convictions,'' *id.* at 600–02, the court may not focus on the underlying criminal conduct itself. This categorical approach ''may permit the sentencing court to go beyond the mere fact of conviction in a narrow range of cases where a jury was actually required to find all the elements'' of the offense. *Id.* at 602. Thus, a prior conviction fits within the particular category of crimes ''if either its statutory definition substantially corresponds to [the definition of the crime], or the charging paper and jury instructions actually required the jury to find all the elements of [the specified crime] in order to convict the defendant.'' *Id.*

Shepard applied *Taylor* to a case in which the prior conviction was the result of a guilty plea. In such a case, the Court held, the sentencing court may look to a limited list of documents to determine the class of offense: ''The terms of the charging document, the terms of the plea agreement or transcript of colloquy between judge and defendant in which the factual basis for the plea was confirmed by the defendant, or to some comparable judicial record of this information.'' *Shepard,* 544 U.S. at 26.

In cases where the defendant's prior conviction involved a provision that covers both conduct that fits within the category and conduct that does not, the Court has authorized courts to look at the judicial record to determine whether the prior conviction was in fact based on conduct that fit within the category of crimes. This analysis is called the ''modified categorical approach.'' Under this modified approach, the court may consider only those sources approved by *Taylor* and *Shepard*—the charging document, the jury instructions, any plea agreement or plea statement, or ''some comparable judicial record of this information.'' The Fifth Circuit has extended this list to include New York Certificates of Disposition, *see United States* v. *Bonilla,* 524 F.3d 647 (5th Cir. 2008), and the Ninth Circuit has included California Minute Entries, *see United States* v. *Snellenberger,* 548 F.3d 699 (9th Cir. 2008). On the other hand, courts have disallowed the use of a federal presentencing report, *see, e.g., United States* v. *Garza-Lopez,* 410 F.3d 268 (5th Cir. 2005), a California abstract of judgment, *see, e.g., United States* v. *Gutierrez-Ramirez,* 405 F.3d 352 (5th Cir. 2005), or a police report, *see, e.g., Shepard,* 544 U.S. at 16; *United States* v. *Almazan-Becerra,* 482 F.3d 1085, 1090 (9th Cir. 2007) (noting that ''[t]he Supreme Court appears to have foreclosed the use of police reports in a *Taylor* analysis'' but that such reports may be used when stipulated to by the defendant).

Notably, the Supreme Court cases have involved statutes rather than guidelines. However, lower courts have by analogy applied the ''categorical approach'' to guideline provisions.

The proposed amendment presents options for specifying the types of documents that may be considered for purposes of the guidelines in determining whether a particular prior conviction fits within a particular category of crimes. Option 1 would apply only to determinations under the illegal reentry guideline, § 2L1.2 (Unlawfully Entering or Remaining in the United States). Option 2 would apply throughout the *Guidelines Manual* in any case in which the nature of the prior conviction is a disputed factor.

Both options contain four options, each of which would specifically authorize the sentencing court to look to certain sources of information beyond the fact of conviction and the statutory definition of the prior offense.

It appears that *Taylor* and *Shepard* specifically authorize the sentencing court to look to four sources of information beyond the fact of conviction and the statutory definition of the prior offense:

(i) The terms of the charging document;

(ii) The terms of the plea agreement or transcript of colloquy between judge and defendant in which the factual basis for the plea was confirmed by the defendant;

(iii) Any explicit factual finding by the trial judge to which the defendant assented; and

(iv) Some comparable judicial record of this information.

Option A would specify these four sources of information. Option B would incorporate Option A and add as a fifth source of information ''any uncontradicted, internally consistent parts of the record from the prior conviction''. *See Shepard,* 544 U.S. at 31 (''I would expand that list to include *any* uncontradicted, internally consistent parts of the record from the earlier conviction. That would include the two sources the First Circuit relied upon in this case,'' which consisted of ''the applications by which the police had secured the criminal complaints and the police reports attached to those applications.'' [Emphasis in original.]) (O'Connor, J., dissenting). Option C would incorporate Option A and add as a fifth source of information ''any other parts of the record from the prior conviction, provided that the information in such other parts of the record has sufficient indicia of reliability to support its probable accuracy''. *See* § 6A1.3 (Resolution of Disputed Factors)(Policy Statement). Option D would combine all three options, incorporating Option A as well as the additional sources of information in both Options B and C.

Issues for comment are also included.

Proposed Amendment:

Option 1:

The Commentary to § 2L1.2 captioned ''Application Notes'' is amended in Note 1 by adding at the end the following:

''[Option A:

(D) *Documents Considered in Determining Whether Prior Conviction Falls Within Category of Offense.*—In determining for purposes of subsection (b)(1) whether a prior conviction falls within a category of offense (*e.g.,* whether a prior conviction qualifies as a 'crime of violence' or 'aggravated felony'), beyond the fact of conviction

and the statutory definition of the prior offense, the court may look only to—

(i) The terms of the charging document,

(ii) The terms of the plea agreement or transcript of colloquy between judge and defendant in which the factual basis for the plea was confirmed by the defendant,

(iii) Any explicit factual finding by the trial judge to which the defendant assented, or

(iv) Some comparable judicial record of this information.]

[Option B incorporates Option A, but also adds:

(v) Any uncontradicted, internally consistent parts of the record from the prior conviction.]

[Option C incorporates Option A, but also adds:

(v) Any other parts of the record from the prior conviction, provided that the information in such other parts of the record has sufficient indicia of reliability to support its probable accuracy. *See* subsection (a) to § 6A1.3 (Resolution of Disputed Factors).]

[Option D combines all three options, *i.e.,* it incorporates Option A and also adds the additional sources of information in both Options B and C, as follows:

(v) Any uncontradicted, internally consistent parts of the record from the prior conviction; or

(vi) Any other parts of the record from the prior conviction, provided that the information in such other parts of the record has sufficient indicia of reliability to support its probable accuracy. *See* subsection (a) to § 6A1.3 (Resolution of Disputed Factors).]''.

Option 2:

The Commentary to § 6A1.3 is amended by adding at the end the following:

''[Option A:

In resolving a dispute as to whether a prior conviction falls within a category of offense for purposes of a guidelines provision (*e.g.,* whether a prior conviction qualifies as a 'crime of violence' or an 'aggravated felony'), beyond the fact of the conviction and the statutory definition of the prior offense, the information that has sufficient indicia of reliability to support its probable accuracy is limited to—

(A) The terms of the charging document;

(B) The terms of the plea agreement or transcript of colloquy between judge and defendant in which the factual basis for the plea was confirmed by the defendant;

(C) Any explicit factual finding by the trial judge to which the defendant assented; or

(D) Some comparable judicial record of this information.]

[Option B incorporates Option A, but also adds:

(E) Any uncontradicted, internally consistent parts of the record from the prior conviction.]

[Option C incorporates Option A, but also adds:

(E) Any other parts of the record from the prior conviction for which there is sufficient indicia of reliability to support its probable accuracy.]

[Option D combines all three options, *i.e.,* it incorporates Option A and also adds the additional sources of information in both Options B and C, as follows:

(E) Any uncontradicted, internally consistent parts of the record from the prior conviction; or

(F) Any other parts of the record from the prior conviction for which there is sufficient indicia of reliability to support its probable accuracy.]''.

Issues for Comment:

1. The proposed amendment provides four options for specifying the types of documents that may be considered in determining whether a particular prior conviction fits within a particular category of crimes. Are there any other types of documents that the Commission should include among the types of documents specified as documents that may be considered for this purpose? If so, what types of documents?

2. Option 1 of the proposed amendment amends only § 2L1.2. However, the Supreme Court's ''categorical approach'' has been applied by lower courts to a variety of other guidelines that contain provisions that use a prior conviction as an aggravating factor if the prior conviction fits within a particular category of crimes. Among the most commonly applied are § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) and § 4B1.1 (Career Offender), each of which contain provisions that use a prior conviction as an aggravating factor if the prior conviction is a ''crime of violence'' or a ''controlled substance offense''. *See, e.g.,* § 2K2.1(a)(1)–(4), § 4B1.1(a). Accordingly, Option 2 of the proposed amendment would apply throughout the *Guidelines Manual*.

As an alternative to Options 1 and 2, should the Commission apply the proposed amendment more broadly than Option 1 (§ 2L1.2-only) but more narrowly than Option 2 (guidelines-wide)? In particular, should the Commission apply the proposed amendment to § 2L1.2 as well as one or more other specific guidelines? If so, which guidelines should the Commission amend?

6. Driving While Intoxicated

Synopsis of Proposed Amendment: This proposed amendment responds to an application issue regarding when a defendant's prior sentence for driving while intoxicated or driving under the influence (and similar offenses by whatever name they are known) is counted toward the defendant's criminal history score. There appear to be differences among the circuits on this issue.

The issue does not occur when the prior sentence is a felony, because ''[s]entences for all felony offenses are counted.'' *See* subsection (c) of § 4A1.2 (Definitions and Instructions for Computing Criminal History). However, when the prior sentence is a misdemeanor or petty offense, circuits have taken different approaches.

When the prior sentence is a misdemeanor or petty offense, § 4A1.2(c) specifies that the offense is counted, but with two exceptions, which are limited to cases in which the prior offense is on (or similar to an offense that is on) either of two lists. On the first list are offenses from ''careless or reckless driving'' to ''trespassing,'' and the exception applies if the prior offense is on (or similar to an offense that is on) the list. In such a case, the sentence is counted only if (A) the sentence was a term of probation of more than one year or a term of imprisonment of at least thirty days, or (B) the prior offense was similar to an instant offense. *See* § 4A1.2(c)(1). On the second list are offenses from ''fish and game violations'' to ''vagrancy,'' and the exception applies to any offense that is on (or similar to an offense that is on) the list. In such a case, the sentence is never counted. *See* § 4A1.2(c)(2).

Several circuits have held that a sentence for driving while intoxicated—whether a felony, misdemeanor, or petty offense—is always counted toward the criminal history score, without exception, even if the offense met the criteria for either of the two lists. These circuits rely on Application Note 5 to § 4A1.2, which provides:

> *Sentences for Driving While Intoxicated or Under the Influence.*—Convictions for driving while intoxicated or under the influence (and similar offenses by whatever name they are known) are counted. Such offenses are not minor traffic infractions within the meaning of § 4A1.2(c).

The Seventh Circuit has read Application Note 5 as ''reflect[ing] the Sentencing Commission's conclusion 'that driving while intoxicated offenses

are of sufficient gravity to merit inclusion in the defendant's criminal history, however they might be classified under state law.' '' *United States* v. *LeBlanc,* 45 F.3d 192, 195 (7th Cir. 1995) (quoting *United States* v. *Jakobetz,* 955 F.2d 786, 806 (2d Cir. 1992)). Thus, the Seventh Circuit has held, a sentence for driving while intoxicated is always counted, without exception. For example, such a sentence is counted even though it may otherwise qualify for a second-list exception, *see LeBlanc, supra,* 45 F.3d at 194–95 (sentence counts even though it was a local ordinance violation that was not also a violation under state criminal law).

The Eighth Circuit has also relied on Application Note 5 to hold that a sentence for driving while intoxicated is always counted, without exception. *See United States* v. *Pando,* 545 F.3d 682 (8th Cir. 2008) (Colorado misdemeanor for driving a vehicle when a person has consumed alcohol or one or more other drugs which ''affects the person to the slightest degree so that the person is less able than the person ordinarily would have been'' to operate a vehicle was ''similar'' to driving while intoxicated or under the influence, and therefore automatically counted, without regard to the exceptions in § 4A1.2(c)(1) and (2)).

The Second Circuit took a different approach in *United States* v. *Potes-Castillo,* 638 F.3d 106 (2d Cir. 2011). In that case, the Second Circuit held Application Note 5 to be ambiguous and could be read either (1) to ''mean that, like felonies, driving while ability impaired sentences are always counted, without possibility of exception'' or (2) ''as setting forth the direction that driving while ability impaired sentences must not be treated as minor traffic infractions or local ordinance violations and excluded under section 4A1.2(c)(2).'' *Id.* at 110–11. The Second Circuit adopted the second reading and, accordingly, held that a prior sentence for driving while ability impaired ''should be treated like any other misdemeanor or petty offense, except that they cannot be exempted under section 4A1.2(c)(2).'' *Id.* at 113. Accordingly, such a sentence can qualify for an exception under the first list (*e.g.,* if it was similar to ''careless or reckless driving'' and the other criteria for a first-list exception were met).

The proposed amendment responds to the application issue by amending Application Note 5 consistent with the approaches of the Seventh and Eighth Circuits. Specifically, it amends Application Note 5 to clarify that such a sentence is always counted, without regard to how the offense is classified and without regard to whether any exception in § 4A1.2(c)(1) or (2) otherwise applies.

Proposed Amendment:

The Commentary to § 4A1.2 captioned ''Application Notes'' is amended in Note 5 by striking ''are counted. Such offenses are not minor traffic infractions within the meaning of § 4A1.2(c).'' and inserting ''are always counted, without regard to how the offense is classified and without regard to whether any exception in § 4A1.2(c)(1) or (2) otherwise applies.''.

7. Burglary of a Non-Dwelling

Synopsis of Proposed Amendment: This proposed amendment responds to differences among the circuits on when, if at all, burglary of a non-dwelling qualifies as a crime of violence for purposes of the guidelines. Under a variety of guidelines, a defendant's sentence is subject to enhancement if the defendant previously committed a crime of violence.

The term ''crime of violence'' is defined in several different ways in the guidelines and in statute. The definition that has given rise to the differences among the circuits is contained in subsection (a) of § 4B1.2 (Definitions of Terms Used in Section 4B1.1). This definition is used not only for determining whether a defendant's sentence is subject to enhancement in § 4B1.1, but also for determining whether a defendant's sentence is subject to enhancement in a variety of other guidelines. *See, e.g.,* § 2K1.3(a)(1)–(2) & comment. (n.2); § 2K2.1(a)(1), (2), (3)(B), (4)(A) & comment. (n.1), § 2K2.1(b)(5) & comment. (n.13(B)); § 2S1.1(b)(1)(B)(ii) & comment. (n.1); § 4A1.1(e) & comment. (n.5).

The definition in § 4B1.2(a) provides, among other things, that a felony is a crime of violence if it ''is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.'' Thus, § 4B1.2(a) specifies that burglary of a dwelling is always a crime of violence but is silent about burglary of a non-dwelling.

Courts have observed that this clause in § 4B1.2(a) substantially parallels a clause in 18 U.S.C. 924(e), except that the statutory provision specifies that any burglary is a crime of violence while the guideline provision is more limited, specifying that burglary of a dwelling is a crime of violence. There are different approaches among the circuits about whether burglary of a non-dwelling is a crime of violence under § 4B1.2(a). The Fourth, Tenth, and Eleventh Circuits have held that burglary of a non-dwelling is never a crime of violence under § 4B1.2(a). *See, e.g., United States* v. *Smith,* 10 F.3d 724, 733 (10th Cir. 1993) (per curiam) (holding that, in promulgating § 4B1.2 with language limiting a crime of violence to ''burglary of a dwelling,'' the Commission ''obviously declined'' to adopt the view that all burglaries present the serious potential risk of physical injury to another necessary to bring the crime within the residual clause); *see also United States* v. *Harrison,* 58 F.3d 115, 119 (4th Cir. 1995); *United States* v. *Spell,* 44 F.3d 936, 938–39 (11th Cir. 1995) (per curiam). The Second and Eighth Circuits have held that burglary of a non-dwelling is always a crime of violence under § 4B1.2(a). *See, e.g., United States* v. *Brown,* 514 F.3d 256, 264–67 (2d Cir. 2008) (concluding that burglary of a non-dwelling falls within the residual clause at § 4B1.2(a) in light of the identically worded residual clause in § 924(e), the circuit court's previous holding that the residual clause in § 924(e) includes burglary of a non-dwelling, and the absence of a relevant statement by the Commission on the issue); *see also United States* v. *Ross,* 613 F.3d 805, 809 (8th Cir. 2010). The First, Fifth, Sixth, Seventh, and Ninth Circuits have declined to adopt *per se* rules, holding instead that the question depends on the individual circumstances of each case. *See, e.g., United States* v. *Giggey,* 551 F.3d 27 (1st Cir. 2008) (en banc); *United States* v. *Matthews,* 374 F.3d 872, 880 (9th Cir. 2004); *United States* v. *Hoults,* 240 F.3d 647, 651–52 (7th Cir. 2001); *United States* v. *Wilson,* 168 F.3d 916, 928 (6th Cir. 1999); *United States* v. *Turner,* 349 F.3d 833 (5th Cir. 2003).

The proposed amendment presents two options for resolving this issue. The first option specifies that all burglaries are crimes of violence. The second option specifies that burglary of a non-dwelling is not a crime of violence [, unless the offense meets the requirement of subsection (a)(1), *i.e.,* it has as an element the use, attempted use, or threatened use of physical force against the person of another].

Two issues for comment are also provided. The first issue for comment asks whether the Commission should consider a third option, *i.e.,* to specify that whether burglary of a non-dwelling is a crime of violence depends on the individual circumstances of each case. The second issue for comment asks whether the Commission should also address the definition of ''crime of violence'' in '2L1.2, which presents a similar issue.

Proposed Amendment:

Option 1:

Section 4B1.2(a)(2) is amended by striking ''burglary of a dwelling'' and inserting ''burglary''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended in Note 1, in the paragraph that begins '' 'Crime of violence' includes'', by striking ''burglary of a dwelling'' and inserting ''burglary''.

Option 2:

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended in Note 1 by inserting after the paragraph that begins '' 'Crime of violence' includes'' the following:

'' 'Crime of violence' does not include burglary of a structure other than a dwelling [, unless the offense meets the requirement of subsection (a)(1), *i.e.,* it has as an element the use, attempted use, or threatened use of physical force against the person of another].''.

Issues for Comment:

1. The two options presented in the proposed amendment would amend § 4B1.2 in either of two ways—to specify that the offense of burglary is always a crime of violence, or to specify that the offense of burglary of a non-dwelling is never a crime of violence. Should the Commission instead consider a third option—to specify that, in determining whether burglary of a non-dwelling is a crime of violence under § 4B1.2(a), the court should determine whether the particular offense satisfies the requirements of the definition's residual clause (*i.e.,* whether the offense ''involves conduct that presents a serious potential risk of physical injury to another'')?

2. The issue of whether burglary of a non-dwelling is a crime of violence is also presented in § 2L1.2 (Unlawfully Entering or Remaining in the United States), which contains its own definition of ''crime of violence''. That definition, as with the definition in § 4B1.2(a), specifies that burglary of a dwelling is a crime of violence, but is silent about burglary of a non-dwelling. If the Commission amends the definition in § 4B1.2 to clarify when, if at all, burglary of a non-dwelling is a crime of violence, should it also make a parallel change to the definition in § 2L1.2?

8. Multiple Counts (§ 5G1.2)

Synopsis of Proposed Amendment: This proposed amendment responds to an application issue regarding the applicable guideline range in a case in which the defendant is sentenced on multiple counts of conviction, at least one of which involves a mandatory minimum sentence that is greater than the minimum of the otherwise applicable guideline range. There are differences among the circuits on this issue.

The issue arises under § 5G1.2 (Sentencing on Multiple Counts of Conviction) when at least one count in a multiple-count case involves a mandatory minimum sentence that affects the otherwise applicable guideline range. In such cases, circuits differ over whether the guideline range is affected only for the count involving the mandatory minimum or for all counts in the case. The cases indicate that there may also be an ancillary application issue over how the ''total punishment'' is to be determined and imposed under § 5G1.1(b).

The Fifth Circuit has held that, in such a case, the effect on the guideline range applies to all counts in the case. *See United States* v. *Salter,* 241 F.3d 392, 395–96 (5th Cir. 2001). In that case, the guideline range on the Sentencing Table was 87 to 108 months, but one of the three counts carried a mandatory minimum sentence of 10 years (120 months), which resulted in a guideline sentence of 120 months. The Fifth Circuit instructed the district court that the appropriate guideline sentence was 120 months on each of the three counts.

The Ninth Circuit took a different approach in *United States* v. *Evans-Martinez,* 611 F.3d 635 (9th Cir. 2010), holding that, in such a case, ''a mandatory minimum count becomes the starting point for any count that carries a mandatory minimum sentence higher than what would otherwise be the Guidelines sentencing range,'' but ''[a]ll other counts * * * are sentenced based on the Guidelines sentencing range, regardless of the mandatory minimum sentences that apply to other counts.'' *See id.* at 637. The Ninth Circuit stated that it would be more ''logical'' to follow the Fifth Circuit's approach but ''such logic is overcome by the precise language of the Sentencing Guidelines''. *See id.*

The District of Columbia Circuit appears to follow an approach similar to the Ninth Circuit. *See United States* v. *Kennedy,* 133 F.3d 53, 60–61 (DC Cir. 1998) (one of two counts carried a mandatory sentence of life imprisonment; district court treated life imprisonment as the guidelines sentence for both counts; Court of Appeals reversed, holding that the appropriate guidelines range for the other count was 262 to 327 months).

The proposed amendment adopts the approach followed by the Fifth Circuit and makes three changes to § 5G1.2.

First, it amends § 5G1.2(b) to clarify that the court is to determine the total punishment (*i.e.,* the combined length of the sentences to be imposed) and impose that total punishment on each count, except to the extent otherwise required by law.

Second, it amends the Commentary to clarify that the defendant's guideline range in a multiple-count case may be restricted by a mandatory minimum penalty or statutory maximum penalty in a manner similar to how the guideline range in a single-count case may be restricted by a minimum or maximum penalty under § 5G1.1 (Sentencing on a Single Count of Conviction). Specifically, it clarifies that when any count involves a mandatory minimum that restricts the defendant's guideline range, the guideline range is restricted as to all counts. It also provides examples of how these restrictions operate.

Third, it amends the commentary to clarify that in a case in which a defendant's guideline range was affected or restricted by a mandatory minimum penalty, the court is resentencing the defendant, and the mandatory minimum sentence no longer applies, the court shall redetermine the defendant's guideline range for purposes of the remaining counts without regard to the mandatory minimum penalty.

Proposed Amendment:

Section 5G1.2 is amended by striking subsection (b) and inserting the following:

''(b) For all counts not covered by subsection (a), the court shall determine the total punishment (*i.e.,* the combined length of the sentences to be imposed) and shall impose that total punishment on each such count, except to the extent otherwise required by law.''.

The Commentary to § 5G1.2 captioned ''Application Notes'' is amended in Note 1, in the paragraph that begins ''*In General.*—'', by striking the period at the end and inserting ''and determining the defendant's guideline range on the Sentencing Table in Chapter Five, Part A (Sentencing Table).''; and by inserting after such paragraph the following:

''Note that the defendant's guideline range on the Sentencing Table may be affected or restricted by a statutorily authorized maximum sentence or a statutorily required minimum sentence not only in a single-count case, *see* § 5G1.1 (Sentencing on a Single Count of Conviction), but also in a multiple-count case. *See* Note 3, below.''.

The Commentary to § 5G1.2 captioned ''Application Notes'' is amended by redesignating Note 3 as Note 4; and by inserting after Note 2 the following:

''3. *Application of Subsection (b).*—

(A) *In General.*—Subsection (b) provides that, for all counts not covered

by subsection (a), the court shall determine the total punishment (*i.e.,* the combined length of the sentences to be imposed) and shall impose that total punishment on each such count, except to the extent otherwise required by law (such as where a statutorily required minimum sentence or a statutorily authorized maximum sentence otherwise requires).

(B) *Effect on Guidelines Range of Mandatory Minimum or Statutory Maximum.*—The defendant's guideline range on the Sentencing Table may be affected or restricted by a statutorily authorized maximum sentence or a statutorily required minimum sentence not only in a single-count case, *see* § 5G1.1, but also in a multiple-count case.

In particular, where a statutorily required minimum sentence on any count is greater than the maximum of the applicable guideline range, the statutorily required minimum sentence on that count shall be the guideline sentence on all counts. *See* § 5G1.1(b). Similarly, where a statutorily required minimum sentence on any count is greater than the minimum of the applicable guideline range, the guideline range for all counts is restricted by that statutorily required minimum sentence. *See* § 5G1.1(c)(2) and accompanying Commentary.

However, where a statutorily authorized maximum sentence on a particular count is less than the minimum of the applicable guideline range, the sentence imposed on that count shall not be greater than the statutorily authorized maximum sentence on that count. *See* § 5G1.1(a).

(C) *Examples.*—The following examples illustrate how subsection (b) applies, and how the restrictions in subparagraph (B) operate, when a statutorily required minimum sentence is involved.

Defendant A and Defendant B are each convicted of the same four counts. Counts 1, 3, and 4 have statutory maximums of 10 years, 20 years, and 2 years, respectively. Count 2 has a statutory maximum of 30 years and a mandatory minimum of 10 years.

For Defendant A, the court determines that the final offense level is 19 and the defendant is in Criminal History Category I, which yields a guideline range on the Sentencing Table of 30 to 37 months. Because of the 10-year mandatory minimum on Count 2, however, Defendant A's guideline sentence is 120 months. *See* subparagraph (B), above. After considering that guideline sentence, the court determines that the appropriate 'total punishment' to be imposed on Defendant A is 120 months. Therefore, subsection (b) requires that the total punishment of 120 months be imposed on each of Counts 1, 2, and 3. The sentence imposed on Count 4 is limited to 24 months, because a statutory maximum of 2 years applies to that particular count.

For Defendant B, in contrast, the court determines that the final offense level is 30 and the defendant is in Criminal History Category II, which yields a guideline range on the Sentencing Table of 108 to 135 months. Because of the 10-year mandatory minimum on Count 2, however, Defendant B's guideline range is restricted to 120 to 135 months. *See* subparagraph (B), above. After considering that restricted guideline range, the court determines that the appropriate 'total punishment' to be imposed on Defendant B is 130 months. Therefore, subsection (b) requires that the total punishment of 130 months be imposed on each of Counts 2 and 3. The sentences imposed on Counts 1 and 4 are limited to 120 months (10 years) and 24 months (2 years), respectively, because of the applicable statutory maximums.

(D) *Special Rule on Resentencing.*—In a case in which (i) the defendant's guideline range on the Sentencing Table was affected or restricted by a statutorily required minimum sentence (as described in subparagraph (B)), (ii) the court is resentencing the defendant, and (iii) the statutorily required minimum sentence no longer applies, the defendant's guideline range for purposes of the remaining counts shall be redetermined without regard to the previous effect or restriction of the statutorily required minimum sentence.''.

9. Rehabilitation

Synopsis of Proposed Amendment: This proposed amendment responds to *Pepper* v. *United States,* 131 S.Ct. 1229 (2011), which held, among other things, that a defendant's post-sentencing rehabilitative efforts may be considered when the defendant is resentenced after appeal. *See id.* at 1236 (holding that ''when a defendant's sentence has been set aside on appeal, a district court at resentencing may consider evidence of the defendant's postsentencing rehabilitation and that such evidence may, in appropriate cases, support a downward variance from the now-advisory Federal Sentencing Guidelines.'').

The policy statement in the guidelines on post-sentencing rehabilitation is § 5K2.19 (Post-Sentencing Rehabilitative Efforts). Two options are presented:

Option 1 repeals § 5K2.19.

Option 2 amends § 5K2.19 to provide that rehabilitative efforts, whether pre- or post-sentencing, may be relevant in determining whether a departure is warranted, if the efforts, individually or in combination with other circumstances, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines.

Option 2 also adds commentary to § 5K2.19 that sets forth a two-part test for determining whether a departure may be warranted and factors for the court to consider in determining whether a departure may be warranted. *See generally Pepper* v. *United States, supra; Gall* v. *United States,* 552 U.S. 38, 57–58 (2007) (in which the district court ''quite reasonably attached great weight to the fact that [defendant] voluntarily withdrew from the conspiracy after deciding, on his own initiative, to change his life'').

Proposed Amendment:

Option 1:

Chapter Five, Part K, Subpart 2 is amended by striking § 5K2.19 and its accompanying commentary.

Option 2:

Chapter Five, Part K, Subpart 2 is amended by striking § 5K2.19 and its accompanying commentary and inserting the following:

''§ 5K2.19. *Rehabilitative Efforts* (Policy Statement)

Rehabilitative efforts may be relevant in determining whether a departure is warranted if the rehabilitative efforts, individually or in combination with other circumstances, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines.

In addition, pre-sentencing rehabilitative efforts may be relevant in determining acceptance of responsibility under § 3E1.1 (Acceptance of Responsibility), and post-sentencing rehabilitative efforts may provide a basis for early termination of supervised release under 18 U.S.C. 3583(e)(1).

Commentary

Application Note:

1. In determining whether to provide a downward departure based on rehabilitative efforts, the court should consider whether the defendant engaged in a pattern of activity that demonstrates that (A) the defendant has been making a genuine and purposeful effort to lead a law-abiding life and (B) the effort is likely to be successful.

The pattern of activity should involve specific rehabilitative acts. Examples of such acts are voluntarily withdrawing from a conspiracy, obtaining counseling,

entering drug treatment, maintaining regular employment, making efforts to remedy the harm caused by the offense, and making educational progress.

The court may also consider the extent to which the specific rehabilitative acts were taken at the defendant's own initiative.

Background: A defendant's post-offense rehabilitative efforts may be considered at sentencing. *See, e.g., Gall* v. *United States,* 552 U.S. 38 (2007). Such efforts may also be relevant in determining whether an adjustment applies under § 3E1.1 (Acceptance of Responsibility) and whether a departure is warranted under § 5K2.16 (Voluntary Disclosure of Offense). Similarly, a defendant's post-sentencing rehabilitative efforts may be considered when the defendant is resentenced after appeal. *See Pepper* v. *United States,* 131 S.Ct. 1229, 1236 (2011) (holding that 'when a defendant's sentence has been set aside on appeal, a district court at resentencing may consider evidence of the defendant's postsentencing rehabilitation' and that such evidence 'may, in appropriate cases,' support a sentence below the applicable guideline range).''.

10. Miscellaneous

Synopsis of Proposed Amendment: This proposed multi-part amendment responds to miscellaneous issues arising from recently enacted legislation.

Part A responds to the Cell Phone Contraband Act of 2010, Public Law 111–225 (August 10, 2010), which amended 18 U.S.C. 1791 (Providing or possessing contraband in prison) to make it a class A misdemeanor to provide a mobile phone or similar device to an inmate, or for an inmate to possess a mobile phone or similar device—specifically, ''a phone or other device used by a user of commercial mobile service (as defined in section 332(d) of Title 47) in connection with such service''. *See* 18 U.S.C. 1791(d)(1)(F). Offenses under section 1791 are referenced in Appendix A (Statutory Index) to § 2P1.2 (Providing or Possessing Contraband in Prison). The other class A misdemeanors in section 1791 involve currency, alcohol, and certain controlled substances; those other types of contraband receive a base offense level of 6 in § 2P1.2. The proposed amendment amends § 2P1.2 to assign mobile phones and similar devices to a particular alternative base offense level in the guidelines. Two options are presented. Option 1 assigns a base offense level of 13. Option 2 assigns a base offense level of 6.

Part B responds to the Prevent All Cigarette Trafficking Act of 2009 (PACT Act), Public Law 111–154 (enacted March 31, 2010). The PACT Act made a series of revisions to the Jenkins Act, 15 U.S.C. 575 *et seq.,* which is one of several laws governing the sale, shipment and taxation of cigarettes and smokeless tobacco. First, the PACT Act raised the criminal penalty at 15 U.S.C. 377 for a knowing violation of the Jenkins Act from a misdemeanor to a felony with a statutory maximum term of imprisonment of 3 years. The proposed amendment amends Appendix A (Statutory Index) to reference section 377 offenses to § 2T2.1 (Non-Payment of Taxes). The possibility of an additional reference, to § 2T2.2 (Regulatory Offenses), is bracketed.

Second, the PACT Act created a new Class A misdemeanor at 18 U.S.C. 1716E, prohibiting the knowing shipment of cigarettes and smokeless tobacco through the United States mail. The proposed amendment amends Appendix A (Statutory Index) to reference section 1716E offenses to either or both of two bracketed options, § 2T2.1 and § 2T2.2.

Part C responds to the Indian Arts and Crafts Amendments Act of 2010, Public Law 111–211 (July 29, 2010), which amended the criminal offense at 18 U.S.C. 1159 (Misrepresentation of Indian produced goods and services) to reduce penalties for first offenders when the value of the goods involved is less than $1,000. The maximum term of imprisonment under section 1159 had been 5 years for a first offender and 15 years for a repeat offender. The Act retained this penalty structure, except that the statutory maximum for a first offender was reduced to 1 year in a case in which the value of the goods involved is less than $1,000. The proposed amendment amends Appendix A (Statutory Index) to reference section 1159 offenses to § 2B1.1 (Theft, Property Destruction, and Fraud).

Part C also addresses an existing offense, 18 U.S.C. 1158 (Counterfeiting Indian Arts and Crafts Board trade mark), which makes it a crime to counterfeit or unlawfully affix a Government trade mark used or devised by the Indian Arts and Crafts Board or to make any false statement for the purpose of obtaining the use of any such mark. The maximum term of imprisonment under section 1158 is 5 years for a first offender and 15 years for a repeat offender. Offenses under section 1158 are not referenced in Appendix A (Statutory Index). The proposed amendment references section 1158 offenses to both § 2B1.1 and § 2B5.3 (Criminal Infringement of Copyright or Trademark).

Part D responds to Public Law 111–350 (enacted January 4, 2011), which enacted certain laws relating to public contracts as a new positive-law title of the Code—title 41, ''Public Contracts''. As part of this codification, two criminal offenses, 41 U.S.C. 53 and 423(a)–(b), and their respective penalty provisions, 41 U.S.C. 54 and 423(e), were given new title 41 U.S.C. section numbers: Sections 8702 and 8707 for sections 53 and 54, and sections 2102 and 2105 for sections 423(a)–(b) and 423(e). The substantive offenses and their related penalties did not change. The proposed amendment makes clerical changes to Appendix A (Statutory Index) to reflect the renumbering and includes a reference for the new section 2102, whose predecessor section 423(a)–(b) was not referenced in Appendix A.

Part E responds to the Animal Crush Video Prohibition Act of 2010, Public Law 111–294 (enacted December 9, 2010), which substantially revised the criminal offense at 18 U.S.C. 48 (Animal crush videos). Section 48 makes it a crime to create or distribute an ''animal crush video,'' as defined in section 48 (which requires, among other things, that the depiction be ''obscene''). The maximum term of imprisonment for a section 48 offense is 7 years. Section 48 is not referenced in Appendix A (Statutory Index). The proposed amendment amends Appendix A (Statutory Index) to reference section 48 offenses to § 2G3.1 (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor; Misleading Domain Names). An issue for comment is also included.

Proposed Amendment

(A) Cell Phone Contraband Act

Section 2P1.2(a) is amended as follows:

Option 1: In paragraph (2) by inserting after ''ammunition,'' the following: ''[a mobile phone or similar device,]''.

Option 2: In paragraph (3) by inserting after ''currency,'' the following: ''[a mobile phone or similar device,]''.

The Commentary to § 2P1.2 captioned ''Application Notes'' is amended by redesignating Notes 1 and 2 as Notes 2 and 3, respectively; and by inserting at the beginning the following:

''1. In this guideline, the term 'mobile phone or similar device' means a phone or other device as described in 18 U.S.C. § 1791(d)(1)(F).''.

(B) Prevent All Cigarette Trafficking Act

Appendix A (Statutory Index) is amended by inserting after the line referenced to 15 U.S.C. 158 the following:

''15 U.S.C. § 377 2T2.1 [, 2T2.2]'';

and by inserting after the line referenced to 18 U.S.C. 1716D the following:

''18 U.S.C. § 1716E [2T2.1], [2T2.2]''.

(C) Indian Arts and Crafts Amendments Act

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1153 the following:

''18 U.S.C. § 1158 2B1.1, 2B5.3
18 U.S.C. § 1159 2B1.1''.

(D) Public Law 111–350

Appendix A (Statutory Index) is amended by striking the following:

''41 U.S.C. § 53 2B4.1
41 U.S.C. § 542B4.1
41 U.S.C. § 423(e) 2B1.1, 2C1.1'';

and inserting the following:

''41 U.S.C. § 2102 2B1.1, 2C1.1
41 U.S.C. § 2105 2B1.1, 2C1.1
41 U.S.C. § 8702 2B4.1
41 U.S.C. § 8707 2B4.1''.

(E) Animal Crush Video Prohibition Act of 2010

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 43 the following:

''18 U.S.C. § 48 2G3.1''.

Issue for Comment:

1. The proposed amendment would reference offenses under 18 U.S.C. 48 (Animal crush videos) to § 2G3.1. That guideline provides a base offense level of 10 and enhancements for distribution (ranging from 2 levels to 5 or more levels), certain conduct with intent to deceive a minor into viewing material that is harmful to minors (2 levels), use of a computer (2 levels), and material portrays sadistic or masochistic conduct or other depictions of violence (2 levels).

The Commission invites comment on offenses under section 48, including in particular the conduct involved in such offenses and the nature and seriousness of the harms posed by such offenses. Do the provisions in § 2G1.3 adequately account for offenses under section 48? If not, how should the Commission amend the guideline to account for offenses under section 48? For example, should the Commission provide one or more new alternative base offense levels, specific offense characteristics, or departure provisions to § 2G3.1 to better account for offenses under section 48? If so, what should the Commission provide?

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Part II

Department of Labor

Employee Benefits Security Administration

Notice of Proposed Exemption; BlackRock, Inc. and Its Investment Advisory, Investment Management and Broker-Dealer Affiliates and Their Successors (Applicants): Located in New York, NY; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11687]

Notice of Proposed Exemption; BlackRock, Inc. and Its Investment Advisory, Investment Management and Broker-Dealer Affiliates and Their Successors (Applicants): Located in New York, NY

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA), the Federal Employees' Retirement System Act of 1986, as amended (FERSA), and the Internal Revenue Code of 1986, as amended (the Code). The proposed transactions involve BlackRock, Inc. and its investment advisory, investment management and broker-dealer affiliates and their successors. The proposed exemption, if granted, would affect plans for which BlackRock, Inc. and its investment advisory, investment management and broker-dealer affiliates and their successors serve as fiduciaries, and the participants and beneficiaries of such plans.

DATES: *Effective Date:* If granted, this proposed exemption will be effective as of March 31, 2012, except that, with respect to Covered Transactions described in Section III.K. and S., the proposed exemption will be effective as of October 1, 2011.

Written Comments and Hearing Requests: All interested persons are invited to submit written comments and/or requests for a hearing on the proposed exemption within forty five (45) days from the date of the publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address and telephone number of the person making the comment or the request for a hearing and (2) the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the proposed exemption. A request for a hearing must also state the issues to be addressed at the requested hearing and include a general description of the evidence to be presented at the requested hearing.

ADDRESSES: All written comments and requests for a public hearing concerning the proposed exemption should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Application No. D–11687. Interested persons are also invited to submit comments and/or hearing requests to the Employee Benefits Security Administration by email or FAX. Any such comments or requests should be sent either to: *moffitt.betty@dol.gov*, or by Fax to (202) 219–0204 by the end of the scheduled comment period. The application for exemption and the comments received will be available for inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

FOR FURTHER INFORMATION CONTACT: Brian L. Shiker, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8552. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document contains a notice of proposed individual exemption from the restrictions of ERISA section 406(a)(1) and 406(b), FERSA section 8477(c)(1) and (c)(2) and the sanctions resulting from the application of Code section 4975, by reason of Code section 4975(c)(1). The proposed exemption has been requested by BlackRock, Inc. and its investment advisory, investment management and broker-dealer affiliates and their successors pursuant to ERISA section 408(a), Code section 4975(c)(2) and FERSA section 8477(c)(3), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this notice of proposed exemption is being issued solely by the Department.

Summary of Facts and Representations [1]

1. BlackRock, Inc. (BlackRock), based in New York, NY, is the largest publicly traded investment management firm. BlackRock, through its investment advisory and investment management subsidiaries, currently manages assets for institutional and individual investors worldwide through a variety of equity, fixed income, cash management and alternative investment products. As of September 30, 2011, BlackRock, through its advisor subsidiaries, had approximately $3.345 trillion in assets under management, including assets managed by BlackRock Institutional Trust Company, N.A. (BTC) (formerly known as Barclays Global Investors, N.A. (BGI)) and its affiliates. The Applicants [2] together with any other entity presently or subsequently under the direct or indirect control, through one or more intermediaries, of BlackRock and successors of any of the foregoing are referred to herein as the ''BlackRock Entities.''

2. BTC is a national banking association headquartered in San Francisco, California. Prior to its acquisition by BlackRock on December 1, 2009 (the Acquisition), BTC (then BGI) was the largest asset manager in the U.S. A significant amount of BTC's assets under management in the U.S. consists of assets of employee benefit plans subject to ERISA, FERSA and/or the Code. BTC is a market leader in index and model-driven investment products. Until its sale to BlackRock, BGI was an indirect subsidiary of

[1] Capitalized terms used but not defined in the Summary of Facts and Representations have the meaning set forth in Section VI of the proposed exemption.

[2] For purposes of this application, references to the ''Applicants'' include each of the banks, investment advisors and investment managers directly or indirectly, through one or more intermediaries, under the control of BlackRock, and any other bank, investment advisor or investment manager which subsequently becomes directly or indirectly, through one or more intermediaries, under the control of BlackRock, and successors of the foregoing. As of the date hereof, banks, investment advisors and investment managers under the control of BlackRock include, but are not limited to, BlackRock Advisors, LLC, BlackRock Financial Management, Inc., BlackRock Capital Management, Inc., BlackRock Institutional Management Corporation, BlackRock International, Ltd., BlackRock Realty Advisors, Inc., BlackRock Investment Management, LLC, BlackRock Fund Advisors, and BTC (collectively, the BlackRock Managers). ''Applicants'' also includes broker-dealers presently or subsequently under the direct or indirect control, through one or more intermediaries, of BlackRock.

Barclays PLC, a public limited company organized under the laws of England and Wales (Barclays). BTC, as of the date of the Acquisition, is a wholly owned subsidiary of BlackRock.

3. The Applicants represent that they are regulated by various Federal government agencies such as the Securities and Exchange Commission (SEC) and the Office of the Comptroller of the Currency, as well as state government agencies and industry self-regulatory organizations (*e.g.,* the Financial Industry Regulatory Authority or, in the case of some broker-dealers and banks, corresponding foreign regulatory authorities). As with the Applicants, each of (a) Barclays, (b) The PNC Financial Services Group, Inc. (PNC), and (c) each entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with one or more of Barclays or PNC,[3] has previously made representations to the Department regarding the significant extent to which they are regulated.[4]

The Acquisition

4. There have recently occurred extraordinary circumstances in both the U.S. financial services industry and the global financial services industry. Many entities in the financial services industry have faced severe economic hardship. During this period of upheaval, the recent trend of industry consolidation amongst significant banks, broker-dealers and other providers of financial services has accelerated. For example, in September 2008, Barclays Bank PLC (Barclays Bank), a subsidiary of Barclays, acquired most of the U.S. broker-dealer business of Lehman Brothers Holdings Inc.; and, in May 2008, Bear Stearns Companies Inc. was acquired by JPMorgan Chase & Co.

5. In this context, BlackRock, in June 2009, made a binding offer to Barclays pursuant to an Amended and Restated Stock Purchase Agreement by and among BlackRock, Barclays Bank and (for limited purposes) Barclays, which ultimately resulted in the Acquisition. BlackRock completed the Acquisition on December 1, 2009, in exchange for an aggregate of 37,566,771 shares of BlackRock common stock and participating preferred stock and approximately $6.6 billion in cash. Barclays' decision to enter into the Acquisition was based upon a variety of factors that Barclays stated would be beneficial to its shareholders, including the creation of material economic exposure to a highly competitive global asset manager.

6. Prior to the Acquisition, PNC, indirectly through its subsidiary PNC Bancorp, Inc. (PNC Bancorp), held an approximately 31.9% economic interest and an approximately 43.2% voting interest in BlackRock. Bank of America Corporation (BOA), through its (indirect) wholly owned subsidiary the Merrill Lynch Group, Inc. (the Merrill Group), held an approximately 48.3% economic interest and approximately 4.6% voting interest in BlackRock. Immediately following the Acquisition, (1) Barclays, (2) BOA, and (3) PNC (each of Barclays and PNC, a Minority Passive Shareholder, or MPS) controlled the following interests in BlackRock:

BOA. BOA owned approximately 3.7% of BlackRock voting common stock and approximately 34.2% of BlackRock equity by value;

PNC. PNC owned approximately 35.2% of BlackRock voting common stock and approximately 24.5% of BlackRock equity by value; and

Barclays. Barclays owned approximately 4.8% of BlackRock voting common stock and approximately 19.8% of BlackRock equity by value.

7. Post-Acquisition, a secondary offering of BlackRock common stock was completed on November 15, 2010 (the Secondary Offering). BlackRock's ownership structure following the Secondary Offering was as follows: (a) BOA controlled 0% of BlackRock's voting common stock and approximately 7.1% of BlackRock's equity by value; (b) PNC controlled approximately 25.3% of BlackRock's voting common stock and approximately 20.3% of BlackRock's equity by value; and (c) Barclays controlled approximately 2.3% of BlackRock's voting common stock and approximately 19.6% of BlackRock's equity by value.

8. On June 1, 2011, BlackRock repurchased from a subsidiary of BOA its remaining ownership interest in BlackRock (the BOA Repurchase). These shares were retired. As a result of the BOA Repurchase, BOA's economic stake in BlackRock was reduced to 0.0%. Concurrently with the BOA Repurchase, Barclays sold a portion of its BlackRock Series B Non-Voting Preferred Stock, which automatically converted into common stock in the hands of the purchaser. As a result of these events on June 1, 2011, Barclays' and PNC's holdings by economic value increased to approximately 19.7% and 21.7%, respectively, and Barclays' and PNC's voting ownership interests were reduced to approximately 2.2% and 24.6%, respectively.

9. All BlackRock stock beneficially owned from time to time by each MPS (other than stock held in certain fiduciary capacities and customer or market making accounts) is subject to a stockholders agreement entered into by and between that MPS and BlackRock (collectively, the Stockholders Agreements). Pursuant to each respective Stockholders Agreement, each MPS has the right to identify to BlackRock two (2) prospective directors, and, if such nominees are reasonably acceptable to the BlackRock Board of Directors (the Board), BlackRock and each respective MPS agree to use best efforts to cause the election of such nominees to the Board.[5] However, at least nine (9) of the current directors[6] must be ''independent'' (within the meaning of New York Stock Exchange (NYSE) rules)[7] of the MPSs and BlackRock management. Furthermore, subject to limited exceptions, each Stockholders Agreement provides that the relevant MPS must vote its BlackRock voting common stock in accordance with recommendations of the Board. In addition, the Audit Committee, the Management Development and Compensation Committee, and the Nominating and Governance Committee of the Board must consist entirely of independent directors, and a majority of each other committee (if any) of the Board, with the exception of the Executive Committee,[8] must consist of independent directors. The Stockholders Agreements provide, with limited exceptions, that all decisions of any committee of the Board require the presence of a majority of the

[3] Each of Barclays and PNC is a ''Minority Passive Shareholder'' or ''MPS,'' but, for avoidance of doubt, an MPS does not include any BlackRock Entity.

[4] See applications associated with PTE 2009–25, 74 FR 45300 (September 1, 2009) (Barclays); and PTE 2009–22, 74 FR 45284 (September 1, 2009) (PNC).

[5] The Stockholders Agreements also contemplate a reduction in the number of Board seats which an MPS is entitled to designate to one upon falling below a 10% equity interest for 90 consecutive days, and to zero upon falling below a 5% equity interest for 90 consecutive days.

[6] There are currently 17 directors on the Board. The maximum permitted number of directors on the Board pursuant to the Stockholders Agreements is 19.

[7] Section 303A.01 of the NYSE Listed Company Manual requires listed companies to have a majority of independent directors. Although an exception is made for companies controlled by a group of shareholders, the Stockholders Agreements among BlackRock and the MPSs preclude the MPSs from becoming part of any such group. BlackRock represents that, based on current equity ownership levels, the Board must include a minimum of 13 directors total (except for temporary vacancies arising by reason of, for example, poor health, retirement or resignation).

[8] The Executive Committee of the Board has not met for over five (5) years.

directors at a meeting then serving on such committee. In fact, as of the date hereof, none of the directors identified to the Board by an MPS serve on any committee of the Board, except that one director identified to the Board by PNC serves on the Executive Committee. While each MPS monitors its investment in BlackRock through Board members it identified to the Board and each MPS has certain limited governance rights, no MPS has or will have, through the Board members it identified, any involvement in the day-to-day management of BlackRock, any BlackRock Manager or other BlackRock Entity.

10. In addition, the Stockholders Agreements provide for additional restrictions on the ability of an MPS to control BlackRock or any BlackRock Manager. These restrictions include standstill arrangements establishing caps on voting interests,[9] transfer restrictions, and restrictions relating to arm's length business relationships between an MPS (or its affiliates) and BlackRock (or its affiliates) in each case as set forth in the applicable Stockholders Agreement.

Interim Prohibited Transaction Relief

11. The Applicants previously applied for (Application No. D–11588) and the Department issued Prohibited Transaction Exemption 2011–17, 76 Fed. Reg. 50632 (August 15, 2011)(the Interim Exemption) that covers certain transactions entered into by BlackRock Managers with, or involving, certain direct or indirect minority passive shareholders in BlackRock, and certain entities related thereto, on behalf of Client Plans or Pooled Funds subject to ERISA, the Code and/or FERSA. Since the Acquisition Date, the Applicants represent that they have expended a significant amount of time, money and other resources to establish and maintain the necessary infrastructure to ensure compliance with the conditions for relief set forth in the Interim Exemption. The Applicants have, among other things, put together a legal and compliance staff that is devoted to assuring compliance with the Interim Exemption, dedicated significant technology resources to developing trading systems and compliance solutions designed to address the requirements of the Interim Exemption, engaged in extensive training of BlackRock personnel (covering individuals serving in legal, compliance and business roles) regarding compliance with the Interim Exemption, and implemented robust post-trade reporting and record-keeping to monitor compliance with the Interim Exemption.

The Interim Exemption expires on the earlier of (a) the effective date of this proposed exemption, if granted, or (b) March 31, 2012.

Requested Relief

12. Given the unique nature of the BlackRock ownership structure following the Acquisition and subsequent Secondary Offering and BOA Repurchase, the Applicants believe that neither MPS should be regarded for ERISA purposes as an ''affiliate'' of BlackRock or any BlackRock Manager, because the Applicants believe that no MPS, alone or with the other MPS, is or will be in a position to ''control'' BlackRock. In addition to the BlackRock ownership structure itself preventing MPS control of BlackRock, the Applicants believe that the Stockholders Agreements provide several important safeguards to mitigate the possibility of an MPS exerting any form of control that might otherwise raise concerns under ERISA. In particular, the standstill agreements, transfer restrictions and arm's length business relationship provisions are designed to ensure that BlackRock maintains its independence. Even if the MPSs wished to act together to control BlackRock, BlackRock believes that the MPSs would not be able to control BlackRock because the Stockholders Agreements mandate that each MPS vote its shares in accordance with the recommendations of the Board, which is dominated by persons other than nominees identified by MPSs. Lastly, the MPSs are competitors in the financial services industry, and as such, concerted action among the MPSs is extremely unlikely.

13. Nevertheless, the Applicants represent that when a BlackRock Manager is a fiduciary with investment discretion with respect to a Client Plan,[10] and the BlackRock Manager is deciding whether to enter into a Covered Transaction [11] with or involving an MPS, the ownership interest of the MPS in BlackRock could affect the BlackRock Manager's best judgment as a fiduciary, raising issues under ERISA section 406(b). The Applicants note that the Department's regulation at 29 CFR 2550.408b–2(e)(1) provides that ''[a] person in which a fiduciary has an interest which may affect the exercise of such fiduciary's best judgment as a fiduciary includes, for example, a person who is a party in interest by reason of a relationship to such fiduciary described in section 3(14)(E), (F), (G), (H), or (I)'' of ERISA. ERISA section 3(14)(H) provides that a 10% or more shareholder of a service provider (which may include a plan fiduciary) is a party in interest to the plan in question by reason of that relationship to the service provider. Accordingly, the Applicants seek relief from the prohibitions of ERISA section 406(b) for the Covered Transactions.

14. Further, if BlackRock Entities and one or more MPS are deemed affiliates, and because each MPS and its affiliates are very likely parties in interest within the meaning of ERISA section 3(14) with respect to many Client Plans, the Applicants also seek relief from the prohibitions of ERISA section 406(a) with respect to the Covered Transactions. Specifically, many prohibited transaction class exemptions from ERISA section 406(a) require as a condition for relief that the plan fiduciary and the party in interest not be ''affiliates.'' Although the Applicants believe that no MPS should be regarded for ERISA purposes as an ''affiliate'' of BlackRock, the Applicants desire the certainty of relief which the proposed exemption would provide if Covered Transactions are entered into in conformance therewith.

15. As discussed above, there have recently occurred extraordinary circumstances in both the U.S. and the global financial services industry. Many entities in the financial services industry have faced severe economic hardship. During this period of upheaval, the trend of industry consolidation amongst significant banks, broker-dealers and other providers of financial services has accelerated. It is the Applicants' belief that each MPS' involvement in financial services has expanded at the same time as the number of participants in the capital markets has declined. As a result, the Applicants believe that the failure to obtain exemptive relief proposed herein would deny Client

[9] The following are the caps on voting interests contained in the Stockholder Agreements: PNC = 49.9%; and Barclays = 4.9%. The following are the caps on economic interest: PNC = 38%; and Barclays = 19.9%.

[10] ''Client Plan'' is defined in Section VI.T. of the proposed exemption and means any plan subject to ERISA section 406, Code section 4975 or FERSA section 8477(c) for which a BlackRock Manager is a fiduciary as described in ERISA section 3(21), including, but not limited to, any Pooled Fund, MPS Plan, Index Account or Fund, Model-Driven Account or Fund, Other Account or Fund, or In-House Plan, as defined in Section VI of the proposed exemption, except where specified to the contrary.

[11] ''Covered Transaction'' is defined in Section VI.X. of the proposed exemption and means each transaction set forth in Section III of the proposed exemption entered into by a BlackRock Manager for a Client Plan with or involving, directly or indirectly, an MPS and/or a BlackRock Entity.

Plans access to a significant portion of the financial markets and that such denial would unduly harm Client Plans and their participants and beneficiaries.

16. The Applicants request that the Department continue relief similar to that provided in the Interim Exemption on the terms set forth herein. The exemption proposed herein would provide relief for certain Covered Transactions that, except as outlined below, are similar in all material respects to the Covered Transactions for which relief is provided in the Interim Exemption.

Structure of Relief

17. The structure of the Applicants' requested relief is founded upon compliance with five sets of general conditions. The five sets of general conditions are: (a) Modified conditions derived from Prohibited Transaction Exemption (PTE) 84–14, as amended (sometimes referred to as the QPAM Exemption); [12] (b) restrictions on the compensation of BlackRock Managers and their employees; (c) the establishment and implementation of certain policies and procedures (the Exemption Polices and Procedures or EPPs); (d) the appointment by BlackRock of an Exemption Compliance Officer (ECO); and (e) the retention by BlackRock of an Independent Monitor (IM). The purpose of these general conditions is, when coupled with the restrictions of the Stockholders Agreements and the BlackRock ownership structure, to foster independence of action by the BlackRock Managers notwithstanding the equity interests in BlackRock held by the MPSs. This unique overarching structure includes a comprehensive compliance function and an independent monitor, each of which work together for the benefit of Client Plans and their participants and beneficiaries by allowing Covered Transactions with or involving an MPS only if the Covered Transaction is, as best as can be determined, as favorable to the Client Plans as arm's length transactions with third parties.

18. In addition to the general conditions, each Covered Transaction has its own set of specific conditions deemed suitable for it in light of the nature of the transaction. Many of the conditions for individual Covered Transactions are derived from statutory exemptions, administrative class exemptions or administrative individual exemptions frequently relied upon by fiduciaries and parties in interest (sometimes affiliated and sometimes not) to exempt similar transactions. The general and transaction-specific conditions for relief attempt to strike a balance that takes into account both the MPSs' unique equity interests in BlackRock and the ability of BlackRock Managers acting on behalf of Client Plans to engage in arm's length Covered Transactions with or involving institutions as significant in their markets as are the MPSs.

General Conditions

19. The structure of the relief proposed herein is very similar to that granted in the Interim Exemption, and is founded upon compliance with general conditions that are essentially the same as the general conditions set forth in the Interim Exemption. Accordingly, Section II of the proposed exemption provides general conditions as follows:

20. *Compliance with the QPAM Exemption (Section II.A.).* With certain exceptions, the conditions for relief under Part I of PTE 84–14 (the QPAM Exemption) must be satisfied with respect to each Covered Transaction.[13] These exceptions are substantially similar to those set forth in the Interim Exemption.[14] Each BlackRock Manager utilizing the requested relief must meet the definition of a ''qualified professional asset manager'' (QPAM) as described in Section VI(a) of the QPAM Exemption, and each Covered Transaction must satisfy the general conditions relating to the QPAM Exemption as set forth in the proposal, which are essentially the same as the Interim Exemption's general conditions relating to the QPAM Exemption.

21. The Applicants, however, believe that the Interim Exemption's conditions should be modified in order to more accurately reflect BlackRock's ability to monitor the entities that provide investment advice to Client Plans' assets under its management. As a result of changes made in this regard, a new Section II.A.3.(b) has been added to the proposed exemption. A discussion of Section II.A.3.(b) is set forth below under Covered Transactions.

22. *Compensation Restrictions (Section II.B).* The Applicants recognize that an unrestricted ability for employees of BlackRock to receive compensation in connection with the Covered Transactions could give rise to potential ERISA conflicts. In order to address this potential for conflicts, Section II.B. of the proposed exemption provides for the same compensation restrictions set forth in the Interim Exemption.[15]

23. *Exemption Policies and Procedures (Section II.C.).* The Applicants recognize that, in order for BlackRock to successfully manage and monitor Covered Transactions, the establishment and use of systematic policies and procedures is essential. Section II.C. of the proposed exemption requires that BlackRock utilize (and update as necessary) the ''Exemption Policies and Procedures'', or ''EPPs'', that were developed and used in connection with the Interim Exemption and which address each of the Covered Transactions. Consistent with the Interim Exemption, the Exemption Policies and Procedures will be developed and/or updated with the cooperation of both the ECO and the IM, and such EPPs will remain subject to the approval of the IM. The EPPs need not address transactions which are not within the definition of the term Covered Transactions.

24. *Exemption Compliance Officer (II.D.).* The Applicants recognize that in order to ensure compliance with the EPPs and the terms of the proposed exemption an internal compliance officer is necessary. Consistent with the Interim Exemption, Section II.D. of the proposed exemption requires that BlackRock employ an internal ''Exemption Compliance Officer'', or ''ECO'', as well as an ''ECO Function''.[16] The ECO and the ECO Function will be maintained by BlackRock in order to monitor the Covered Transactions for compliance with the Code, ERISA, FERSA, the EPPs and the exemption. The responsibilities and requirements of the ECO and the ECO Function are set forth in Section II.D. of the proposed exemption.

25. *Independent Monitor (II.E.).* The Applicants believe that the ECO and the ECO Function alone may not be sufficient to completely avoid potential

[12] 49 FR 9494 (Mar. 13, 1984), as amended, 70 FR 49305 (Aug. 23, 2005), and as amended, 75 FR 38837 (July 6, 2010).

[13] The QPAM Exemption may not be relied upon for securities lending. *See* Part I(b)(1) of the QPAM Exemption. However, for purposes of the exemption proposed herein, securities lending constituting Covered Transactions involving an MPS must comply with the terms of Section II.A. of the proposed exemption as well as the specific conditions set forth in Section III.L. of the proposed exemption.

[14] 76 FR at 50637.

[15] 76 FR at 50638.

[16] For purposes hereof, ''ECO Function'' is defined in Section VI.Z. of the proposed exemption and means the ECO and such other BlackRock employees in legal and compliance roles working under the supervision of the ECO in connection with the Covered Transactions. The list of BlackRock employees shall be shared with the IM from time to time, not less than quarterly, and such employees will be made available to discuss the relevant Covered Transactions with the IM to the extent the IM or the ECO deem it reasonably prudent.

conflicts of interests or the appearance thereof. Conversely, the Applicants also believe that a wholly independent third party alone would not be able to efficiently or effectively monitor and oversee all of the relevant BlackRock activities. Consistent with the Interim Exemption, Section II.E. of the proposed exemption requires that BlackRock appoint an ''Independent Monitor'', or ''IM''. The IM will monitor the ECO and the Covered Transactions for compliance with the Code, ERISA, FERSA, the EPPs and the exemption. The responsibilities and requirements of the IM are set forth in Section II.E. of the proposed exemption.

26. *Notice (II.F.).* Client Plans will receive notice regarding the proposed exemption through publication in the **Federal Register**. The Applicants believe that such notice is sufficient and that additional mailings to the Client Plans would be confusing and burdensome to the Client Plans given the substantial similarity between the Interim Exemption and this proposed exemption.

Covered Transactions

27. As discussed above, the structure of the requested relief is founded upon compliance with five sets of general conditions. These five sets of general conditions are then modified by specific conditions deemed suitable for each Covered Transaction. Many of the conditions for individual Covered Transactions are derived from statutory exemptions, administrative class exemptions or administrative individual exemptions frequently relied upon by fiduciaries and parties in interest (sometimes affiliated and sometimes not) to exempt similar transactions. Section III of the proposed exemption sets forth the Covered Transactions for which the Applicants are seeking exemptive relief and the conditions which must be satisfied in respect of such Covered Transactions in order to be accorded such relief.

28. Except as described below, the Covered Transactions for which relief is proposed herein are substantially similar to the corresponding ''Covered Transactions'' in the Interim Exemption, and each such Covered Transaction is subject to substantially the same conditions as set forth in the Interim Exemption.[17] The Applicants are not requesting relief with respect to the Covered Transactions described in Section III.A. (Continuing Covered Transactions), T. (The Provision of Custodial, Administrative and Similar Ministerial Services by an MPS for a Client Plan as a Consequence of a BlackRock Manager Exercising Investment Discretion on Behalf of the Client Plan or Rendering Investment Advice to the Client Plan) or W. (Investment of Assets of MPS Plans in a BlackRock Bank-Maintained Common or Collective Trust as of the Date of the Acquisition—Fees Paid Outside the Trust) of the Interim Exemption. However, the Applicants are seeking exemptive relief with respect to a new Covered Transaction described in Section III.W. of the proposed exemption.

29. The Applicants further request, with respect to a small number of the Covered Transactions identified herein, certain changes from the relief provided in the Interim Exemption and to the applicable conditions. Set forth below is a discussion of (a) three broad changes that impact multiple Covered Transactions and (b) modifications with respect to specific Covered Transactions.

30. *MPS Investment Advice.* The Interim Exemption imposed conditions with respect to several Covered Transactions that restricted BlackRock Managers from engaging in transactions with MPSs that possess discretionary authority or control with respect to the investment of the Client Plan assets involved in the transaction, or render investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to such assets. This condition was set forth in Section III.I. (Repurchase Agreements), L. (Bank Deposits and Commercial Paper), M. (Securities Lending) and U. (ABCP Conduit) of the Interim Exemption. In this proposed exemption, the relevant sections are re-designated Section III.H. (Repurchase Agreements), K. (Bank Deposits and Commercial Paper), L. (Securities Lending) and S. (ABCP Conduit).

The Applicants represent that BlackRock Managers are often unable to make a determination as to which parties provide investment advice with respect to Client Plan assets. The inability to make these determinations created uncertainty as to which parties were subject to the restriction of these conditions, resulting in the relief provided in the Interim Exemption for those sections being unworkable in some situations from a practical perspective. The Applicants, therefore, requested deletion of that portion of the condition that would limit transactions with MPSs that provide investment advice within the meaning of 29 CFR 2510.3–21(c).

The Department understands the Applicants' concerns regarding the practical implication of the restriction on transactions with investment advice providers and, for purposes of the exemption proposed herein, has revised the conditions at issue so that the restriction only apply to transactions with MPSs that possess discretionary authority or control with respect to the investment of the Client Plan assets involved in the transaction. The Department additionally made several related changes to the affected sections. First, the Department added a condition to Section III.H. and K. to clarify that the Client Plan involved in the transaction may not be an MPS Plan of the MPS with whom the transaction takes place, or an MPS Plan of another member of the same MPS Group as such MPS. Second, at the Applicants' request, the Department revised Section II.A.3. to include a new Section II.A.3.(b), which provides that the conditions described above in this paragraph shall be deemed satisfied if, with respect to the Covered Transaction in question, section II.A.3.(a) is satisfied. Section II.A.3.(a) provides that, in the case of an investment fund in which two or more unrelated Client Plans have an interest, a Covered Transaction with an MPS will be deemed to satisfy the requirements of Section II.A.2. of the proposed exemption if the assets of a Client Plan on behalf of which the MPS or its affiliate possesses the authority and which are managed by the BlackRock Manager in the investment fund, when combined with the assets of other Client Plans established or maintained by the same employer (or an affiliate thereof) or by the same employee organization, on behalf of which the same MPS possesses such authority and which are managed in the same investment fund, represent less than ten percent (10%) of the assets of the investment fund. Finally, with respect to relief for Securities lending by a BlackRock Manager to an MPS, the Department included two additional conditions in Section III.L. similar to those contained in subsections (p) and (q) of PTE 2002–46.[18] It is the Department's view that the general conditions of the proposed exemption, including the modified conditions derived from the QPAM exemption, with the specific conditions of these Sections as modified, provide sufficient safeguards for the affected Client Plans, participants and beneficiaries, even without the restriction on transactions with investment advice providers.

31. *Directed Brokerage Accounts/ Wrap Agreements.* Section III.P., R., S. and V. of the Interim Exemption

[17] 76 FR at 50640.

[18] 67 FR 59569 (September 23, 2002), as corrected, 67 FR 69046 (November 14, 2002).

provided relief that included a provision that permitted BlackRock Managers to use an MPS as a Securities broker pursuant to either directed brokerage and/or wrap fee arrangements in effect on the date of the Acquisition.[19] The Applicants represent that relief for such directed brokerage and/or wrap fee arrangements is no longer necessary. In the absence of such necessity, the Department has eliminated the directed brokerage and/or wrap fee agreement provisions in the corresponding sections (Section III.O., Q., R. and T.) of the proposed exemption.

32. *Primary/Secondary Markets and Agency/Principal.* Section III.L and U. of the Interim Exemption provided relief with respect to (a) investments in bank deposits and commercial paper, and (b) purchases, sales and holdings by BlackRock Managers for Client Plans of commercial paper issued by ABCP conduits, when an MPS has one or more roles.[20] The Applicants request changes from the conditions with respect to both Covered Transactions in the Interim Exemption. Purchases, sales and placements of bank deposits and commercial paper commonly occur without reference to primary or secondary markets and without distinction as to whether they are on a principal or agency basis. As a result, such distinctions are simply not relevant to the short term instruments described in the Covered Transactions (which is in contrast to trading of longer term Fixed Income Obligations or equity Securities). To address this issue, the Department has modified the language of Section II.K. and S. of the proposed exemption to more accurately reflect the nomenclature of bank deposits and commercial paper.

33. *Repurchase Agreements when an MPS is the Seller (Section III.H.).* With respect to Covered Transactions involving investments in repurchase agreements when an MPS is the seller, the Interim Exemption provided relief with respect to certain repurchase agreements that were in effect as of the date of the Acquisition that otherwise would not have complied with the conditions of the Interim Exemption.[21] Applicants represent that such repurchase agreements are no longer in place. As a result, the Applicants are no longer requesting relief with respect to repurchase agreements that were in effect as of the date of the Acquisition. The Department has made this change to the proposed exemption.

34. *Bank Deposits and Commercial Paper (Section III.K.).* With respect to Covered Transactions involving investments in bank deposits and commercial paper, the Applicants request changes from the conditions in the Interim Exemption. The Applicants represent that, with respect to commercial paper, an MPS may often act in a continuing capacity, such as a placement agent or an administrator. To address this concern, the language of the proposed exemption has been modified to reflect the fact that an MPS may act in a continuing capacity. In addition, in order to provide additional protections for participants and beneficiaries, the proposed exemption provides that all purchases and sales of commercial paper to or from an MPS be made pursuant to the Three Quote Process.

35. *Securities Lending to an MPS (Section III.L.).* The Interim Exemption provided relief for the lending of securities by BlackRock Managers to an MPS. Such relief was extended to both (a) Index Accounts or Funds and Model-Driven Accounts or Funds and (b) Other Accounts or Funds. For purposes of this proposed exemption, the Applicants limited their request to relief for Index Accounts or Funds and Model-Driven Accounts or Funds. The Department has revised Section III.L. of the proposed exemption accordingly.

36. *To-Be-Announced Trades (TBAs) of GNMA, FHLMC, FarmerMac or FNMA Mortgage-Backed Securities with an MPS Counterparty (Section III.M.).* With respect to To-Be-Announced Trades (TBAs), Section III.N. of the Interim Exemption provided relief for TBAs of GNMA, FHLMC, or FNMA Mortgage-Backed Securities with an MPS counterparty.[22] The Applicants request that the Department add FarmerMac mortgage-backed Securities to the relief provided for TBAs. Such additional relief is necessary because the Applicants have found that, in practice, BlackRock Managers may engage in principal trades on a TBA basis with FarmerMac mortgage-backed Securities. Not allowing such TBAs, according to the Applicants, would deprive Client Plans of a substantial pool of TBAs.

The Applicants represent that the addition of relief for TBAs of FarmerMac mortgage-backed Securities is consistent with the relief provided in the Interim Exemption with respect to both FHLMC and FNMA mortgage-backed Securities. All three entities are the recipients of indirect government guarantees, and each entity has historically been treated similarly by the Department.[23] The Department agrees with the Applicants, and it has added FarmerMac mortgage-backed Securities to the relief proposed for TBAs herein.

37. *Purchase of a Portion or All of a Loan to an Entity Which is not an MPS and is not a BlackRock Entity from an MPS or Other Arranger and the Holding thereof by BlackRock Managers Where an MPS is an Arranger, and/or an MPS has an Ongoing Function Regarding Such Loan (Section III.W.).* The Applicants request exemptive relief with respect to a new Covered Transaction. The Applicants represent that there is a significant market in Loans (and participations in such Loans) made to commercial borrowers to finance either their current and ongoing operations, or a specific transaction. The terms governing the Loans and the lenders' commitment to fund them are generally negotiated between the borrower and the sole Arranger or Lead Arranger,[24] as applicable. The sole Arranger, or Lead Arranger with the assistance of the other Arrangers, undertakes to effectively sell portions of the Loan in a Loan Offering[25] by finding one or more sophisticated financial institutions such as commercial banks, insurance companies or other companies or funds regularly engaged in making, investing in, purchasing or selling commercial loans with sufficient capital to either take an assignment of, or a participation interest in, all or a portion of the Loan, on either a firm commitment or best efforts basis (in each case, as described below). The Arrangers assume a portion of the commitment to the borrower to fund the Loans initially. The Applicants represent that conceptually, these types of lending transactions are similar to the purchase and holding by BlackRock Managers on behalf of Client Plans of Fixed Income Obligations issued by

[19] 76 FR at 50647–50650.

[20] 76 FR at 50643 and 50649.

[21] 76 FR at 50642.

[22] 76 FR at 50647.

[23] *See* ERISA Advisory Opinion 99–05A (February 22, 1999).

[24] ''Arranger'' is defined in Section VI.I. of the proposed exemption and the term means a sophisticated financial institution, such as a commercial or investment bank, regularly engaged in structuring commercial loans, and ''Lead Arranger'' is defined in Section VI.ZZ. of the proposed exemption and the term means, with respect to any Loan Offering involving more than one Arranger, the Arranger designated as such by all of such Arrangers.

[25] ''Loan Offering'' is defined in Section VI.BBB. of the proposed exemption and the term means, with respect to the aggregate principal amount of any Loan extended to a commercial borrower in any single transaction, the process of structuring, marketing and offering to banks, insurance companies, investment funds and other institutional investors the opportunity to purchase interests in such Loan.

third parties where an MPS may act as the underwriter.[26]

The Applicants further represent that in a firm commitment Loan Offering, the Arrangers are obligated to make the Loan in the full amount of their commitment, even if they have not found other investors to participate in or take an assignment of all or a portion of the Loan. If the transaction is conducted on a best efforts basis, the Arrangers are not obligated to make the Loan in the full amount requested by the borrower if there is not sufficient interest in the market. Selling efforts with respect to a particular Loan Offering do not begin before a decision is made regarding whether such Loan Offering will be made on a firm commitment or best efforts basis. The Applicants are only requesting relief under the proposed exemption for Loans that are made on a firm commitment basis.

The Applicants represent that potential purchasers of a portion or all of a Loan are able to review relevant information about the Loan in advance, and indicate whether they are interested in taking an assignment or participation in such Loan. In an assignment, the lender of record of the portion of the Loan which is assigned is changed, and the title, voting rights and all other rights are transferred to the assignee. In a participation, the lender of record remains the original lender, and such lender typically retains voting rights, except for certain extraordinary actions primarily relating to the economic terms of the Loan. The Applicants are only requesting relief under the proposed exemption for transactions involving the assignment of Loans.

The Applicants represent that the sole Arranger or Lead Arranger, as applicable, is typically responsible for negotiating the terms of the Loan, including the Loan Offering, commitment or other similar underwriting fee to be paid by the borrower, and building a book of investors to hold the Loan. Where there is more than one Arranger, other Arrangers may participate in the sales effort in coordination with the Lead Arranger. The material terms of the Loan are typically negotiated and agreed with the borrower before commencement of the Loan Offering effort. When the sole Arranger or Lead Arranger, as applicable, has negotiated the material terms of the Loan, they are posted to one or more web-based sites (*e.g.,* Intralinks) for potential investors and lenders to review. These sites provide detailed information regarding the borrower and draft Loan documents (*e.g.,* credit agreement, confidential information statement). The covenants in the applicable credit agreement are often more highly structured than in a high yield fixed income underwritten offering and thereby would typically provide enhanced protection for investors.

The Applicants represent that the fee received by an Arranger depends upon whether the offering is on a firm commitment or a best efforts basis and is generally calculated as a percentage of the principal amount of the Loan. The fee is generally higher for a firm commitment transaction than a best efforts transaction. In a firm commitment transaction, each Arranger will receive a specified percentage of the fee which is determined on the basis of the size of the Loan commitment before the sales effort commences and the amount of such fee does not vary depending on a particular member's success in the sales effort. Thus, if an MPS is an Arranger, its compensation in the form of the fee will not increase if a BlackRock Manager on behalf of a Client Plan purchases from such MPS, rather than another Arranger.

The Applicants represent that in some Loan transactions, the sole Arranger or Lead Arranger, as applicable, has no ongoing role after the sale with respect to the Loans. In other transactions, the sole Arranger or Lead Arranger, as applicable, does serve an ongoing function such as an administrative agent or a collateral agent. Most commonly, the collateral agent and the administrative agent are the same entity. The Applicants further represent that generally: (a) The administrative agent acts as an agent between the lenders and the borrower; the role of an administrative agent is administrative and ministerial and involves relaying information, tallying votes and organizing calls; there is no fiduciary relationship between the lenders and the administrative agent; and there is generally a flat fee (currently in the range of $100,000 to $200,000 per annum) for acting as an administrative agent and this fee is paid by the borrower; and (b) the collateral agent holds the collateral on behalf of all of the lenders.

The Applicants represent that, according to their research, the Barclays MPSs are ranked in the top ten Arrangers for Loans. They acted in 92 deals in 2010, representing 6% market share and in 70 deals in the first half of 2011, representing a 7.6% market share. The same research indicates that the shares of PNC MPSs are smaller, but the PNC MPSs still rank in the top 25 Arrangers for Loans.

The Applicants represent that investments in these types of firm commitment assigned Loans represent an attractive investment opportunity for Client Plans. Such Loans are typically senior secured and typically have the highest or second highest priority of claim on a borrower's assets and cash flow. Such Loans also provide an opportunity to generate a return based upon a floating interest rate (resulting in Client Plans receiving more when interest rates rise). The Applicants believe that a failure to obtain relief for this type of Covered Transaction would materially inhibit Client Plan access to this significant asset class.

In response, the Department is proposing relief for the purchase and holding of all or a portion of a Loan by a BlackRock Manager on behalf of a Client Plan, where such purchase may be from an MPS or other Arranger, and/or an MPS may be an Arranger and/or have an ongoing function regarding such Loan. Conditions applicable to this type of transaction would be: (a) The BlackRock Manager on behalf of the Client Plan obtains an assigned interest in the Loan or a portion thereof, as opposed to a participation interest, (b) the borrower under the Loan must not be an MPS or BlackRock Entity, (c) the Loan must be offered on a firm commitment basis, (d) conditions similar to Subsections IV.A.4–12., as applicable, and (e) if an MPS has an ongoing function in respect of such Loan, such as an administrative agent or collateral agent, the taking of or refraining from taking of any action by the responsible BlackRock Manager which could have a material positive or negative effect upon the MPS must be decided upon by the IM.

Affiliated Underwritings and Affiliated Servicing (Section IV)

38. Covered Transactions for which relief is proposed herein, including Sections III.B., D., E. and F., include in their conditions requirements regarding affiliated underwriting and affiliated servicing that are set forth in Section IV of the proposed exemption. The Department notes that these conditions are substantially similar to those under the Interim Exemption.[27]

Correction Procedures (Section V)

39. The Applicants request confirmation that isolated transgressions of the EPPs, or isolated failures to

[26] Solely for purposes of Section III.W. of the proposed exemption, ''Loan'' is defined in Section VI.AAA. of the proposed exemption and the term does not include any Fixed Income Obligations which are covered separately under Section IV.A. of the proposed exemption.

[27] 76 FR at 50651.

comply with the conditions associated with a Covered Transaction constituting a non-exempt prohibited transaction (the latter, a Violation) should not cause the entire exemption, if granted, to cease to be available. Only a persistent pattern or practice of violations of the EPPs or the conditions of the exemption should potentially cause the exemption to be revoked. The Department notes that the correction procedures under the proposed exemption are substantially similar to those under the Interim Exemption, and the Department concurs with the Applicants' analysis on this issue.[28]

Effective Date

40. If granted, the proposed exemption will be effective March 31, 2012. However, Applicants represent that they substantially complied with the conditions applicable to Covered Transactions described in Section III.K. and S. effective October 1, 2011. As a result, the proposed exemption will be effective with respect to Covered Transactions described in Section III.K. and S. as of October 1, 2011.

41. In summary, the Applicants represent that the exemption proposed herein will satisfy the statutory criteria of ERISA section 408(a) and Code section 4975(c)(2) because:

(a) *Administratively feasible.* The Applicants believe that the proposed exemption is administratively feasible. Most of the Covered Transactions are the subject of existing statutory and/or administrative exemptions. The conditions for relief for the Covered Transactions have been modified to reflect, on the one hand, the possible negative implication of the equity investments of the MPSs in BlackRock, and on the other hand, the circumscribed ability of the MPSs to exercise rights normally associated with such equity investments. In addition, EPPs have been developed with the cooperation and approval of the IM; an ECO has been appointed to report on compliance with the terms of the exemption and the EPPs; and the IM will review compliance reports, pass upon corrections of Violations, and if necessary, contact the Department. Granting the proposed exemption requires no additional monitoring by the Department.

(b) *In the interest of plans and participants and beneficiaries.* The Applicants believe that the proposed exemption is in the interest of plans and participants and beneficiaries because the proposed exemption would allow BlackRock Managers to continue to engage in Covered Transactions with major participants in the financial markets which are necessary and beneficial to plans and their participants and beneficiaries. While many Covered Transactions (although perhaps not all) could be engaged in with parties other than MPSs, in numerous cases such transactions would be quantitatively or qualitatively inferior to the same transactions with an MPS.

(c) *Protective of the rights of participants and beneficiaries of such plans.* Each of the Covered Transactions is protective of the rights of participants and beneficiaries because specific conditions have been tailored to their respective natures. More broadly, the rights of participants and beneficiaries are protected by the general conditions, modeled on the QPAM Exemption, that are applicable to all Covered Transactions. The general protective conditions include compensation restrictions, development of EPPs, and implementation of EPPs with the cooperation and approval of the IM. Further, the ECO will report on compliance with the exemption and the EPPs, and the IM will review compliance reports, pass upon corrections of Violations, and if necessary, contact the Department.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the following exemption under the authority of ERISA section 408(a), Code section 4975(c)(2) and FERSA section 8477(c)(3), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), as follows:

Section I: Covered Transactions Generally

If the proposed exemption is granted, effective as of March 31, 2012 (or, in the case of Covered Transactions described in Section III.K or Section III.S. of this exemption, October 1, 2011), the restrictions of ERISA sections 406(a)(1) and 406(b), FERSA section 8477(c)(1) and (2), and the sanctions resulting from the application of Code section 4975, by reason of Code section 4975(c)(1),[29] shall not apply to the Covered Transactions set forth in Section III and entered into on behalf of or with the assets of a Client Plan; provided, that (x) the generally applicable conditions of Section II of this exemption are satisfied, and, as applicable, the transaction-specific conditions set forth below in Sections III and IV of this exemption are satisfied, or (y) the Special Correction Procedure set forth in Section V of this exemption is satisfied.

Section II: Generally Applicable Conditions

A. *Compliance with the QPAM Exemption.* The following conditions of Part I of Prohibited Transaction Exemption 84–14, as amended (PTE 84–14 or the QPAM Exemption),[30] must be satisfied with respect to each Covered Transaction:

1. The BlackRock Manager engaging in the Covered Transaction is a Qualified Professional Asset Manager;

2. Except as set forth in Section III of this exemption, at the time of the Covered Transaction (as determined under Section VI(i) of the QPAM Exemption) with or involving an MPS, such MPS, or its affiliate (within the meaning of Section VI(c) of the QPAM Exemption),[31] does not have the authority to:

(a) Appoint or terminate the BlackRock Manager as a manager of the Client Plan assets involved in the Covered Transaction, or

(b) Negotiate on behalf of the Client Plan the terms of the management agreement with the BlackRock Manager (including renewals or modifications thereof) with respect to the Client Plan assets involved in the Covered Transaction;

3. (a) Notwithstanding the foregoing, in the case of an investment fund (as defined in Section VI(b) of the QPAM Exemption) in which two or more unrelated Client Plans have an interest, and which is a Pooled Fund, a Covered Transaction with an MPS will be deemed to satisfy the requirements of Section II.A.2. of this exemption if the assets of a Client Plan on behalf of which the MPS or its affiliate possesses the authority set forth in Section II.A.2.(a) and/or (b) above, and which are managed by the BlackRock Manager in the investment fund, when combined with the assets of other Client Plans established or maintained by the same employer (or an affiliate thereof described in Section VI(c)(1) of the QPAM Exemption) or by the same employee organization, on behalf of

[28] 76 FR at 50654.

[29] For purposes of this proposed exemption, references to ERISA section 406 should be read to refer as well to the corresponding provisions of Code section 4975 and FERSA section 8477(c).

[30] 49 FR 9494 (Mar. 13, 1984), as amended, 70 FR 49305 (Aug. 23, 2005), and as amended, 75 FR 38837 (July 6, 2010).

[31] Solely for purposes of Section II.A.2. and Section II.A.3. of this exemption, no BlackRock Entity will be deemed to be an affiliate of an MPS. The Department is not making herein a determination as to whether any BlackRock Entity is an affiliate of an MPS under ERISA.

which the same MPS and/or its affiliates possess such authority and which are managed by the BlackRock Manager in the same investment fund, represent less than ten percent (10%) of the assets of the investment fund; and

(b) the conditions set forth in Subsections 14. and 15. of Section III.H., Subsections 2(e) and 3. of Section III.K., Section III.L.2.(b) and Subsections 1. and 2. of Section III.S. of this exemption shall be deemed satisfied if, with respect to the Covered Transaction in question, Section II.A.2. of this exemption is satisfied by reason of Section II.A.3.(a) of this exemption.

4. The terms of the Covered Transaction are negotiated on behalf of the investment fund by, or under the authority and general direction of, the BlackRock Manager and either the BlackRock Manager or (so long as the BlackRock Manager retains full fiduciary responsibility with respect to the Covered Transaction) a property manager acting in accordance with written guidelines established and administered by the BlackRock Manager, makes the decision on behalf of the investment fund to enter into the Covered Transaction, provided that the Covered Transaction is not part of an agreement, arrangement or understanding designed to benefit the MPS;

5. The Covered Transaction is not entered into with an MPS which is a party in interest or disqualified person with respect to any Client Plan whose assets managed by the BlackRock Manager, when combined with the assets of other Client Plans established or maintained by the same employer (or affiliate thereof described in Section VI(c)(1) of the QPAM Exemption) or by the same employee organization, and managed by the BlackRock Manager, represent more than twenty percent (20%) of the total client assets managed by the BlackRock Manager at the time of the Covered Transaction;

6. At the time the Covered Transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the BlackRock Manager, the terms of the Covered Transaction are at least as favorable to the investment fund as the terms generally available in arm's length transactions between unrelated parties; and

7. Neither the BlackRock Manager nor any affiliate thereof (as defined in Section VI(d) of the QPAM Exemption),[32] nor any owner, direct or indirect, of a five percent (5%) or more interest in the BlackRock Manager[33] is a person who within the ten (10) years immediately preceding the Covered Transaction has been either convicted or released from imprisonment, whichever is later, as a result of: Any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any other crime described in ERISA section 411. For purposes of this section, a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

B. *Compensation.* None of the employees of a BlackRock Manager receives any compensation that is based on any Covered Transaction having taken place between Client Plans and any of the MPSs (as opposed to with another institution that is not an MPS). The fact that a specific Covered Transaction occurred with an MPS as opposed to a non-MPS counterparty is ignored by BlackRock and BlackRock Managers for compensation purposes. None of the employees of BlackRock or a BlackRock Manager receive any compensation from BlackRock or a BlackRock Manager which consists of equity Securities issued by an MPS, which fluctuates in value based on changes in the value of equity Securities issued by an MPS, or which is otherwise based on the financial performance of an MPS independent of BlackRock's performance, provided that this condition shall not fail to be met because the compensation of an employee of a BlackRock Manager fluctuates with the value of a broadly-based index which includes equity Securities issued by an MPS.

C. *Exemption Policies and Procedures.* BlackRock adopts and implements Exemption Policies and Procedures (EPPs) which address each of the types of Covered Transactions and which are designed to achieve the goals of: (1) Compliance with the terms of the exemption, (2) ensuring BlackRock's decision-making with respect to the Covered Transactions on behalf of Client Plans with MPSs or BlackRock Entities is done in the interests of the Client Plans and their participants and beneficiaries, and (3) to the extent possible, verifying that the terms of such Covered Transactions are at least as favorable to the Client Plans as the terms generally available in arm's length transactions with unrelated parties. The EPPs are developed with the cooperation of both the Exemption Compliance Officer (ECO) and the Independent Monitor (IM), and such EPPs are subject to the approval of the IM. The EPPs need not address transactions which are not within the definition of the term Covered Transactions.

Transgressions of the EPPs which do not result in Violations require correction only if the amount involved in the transgression and the extent of deviation from the EPPs is material, taking into account the amount of Client Plan assets affected by such transgressions (EPP Corrections). The ECO will make a written determination as to whether such transgressions require EPP Correction, and, if the ECO determines an EPP Correction is required, the ECO will provide written notice to the IM of the EPP Correction. The ECO will provide summaries for the IM of any such EPP Corrections as part of the quarterly report referenced in Section II.D.11.

D. *Exemption Compliance Officer.* BlackRock appoints an Exemption Compliance Officer (ECO) with respect to the Covered Transactions. If the ECO resigns or is removed, BlackRock shall appoint a successor ECO within a reasonable period of time, not to exceed thirty (30) days, which successor shall be subject to the affirmative written approval of the IM. With respect to the ECO, the following conditions shall be met:

1. The ECO is a legal professional with at least ten years of experience and extensive knowledge of the regulation of financial services and products, including under ERISA and FERSA;

2. A committee made up exclusively of members of the BlackRock Board of Directors (the Board) who are independent of BlackRock and the MPSs determines the ECO's compensation package, with input from the general counsel of BlackRock; the ECO's compensation is not set by BlackRock business unit heads, and there is no direct or indirect input regarding the identity or compensation of the ECO from any MPS;

[32] For the avoidance of doubt, all MPSs are excluded from the term ''affiliate'' for these purposes.

[33] For the avoidance of doubt, all MPSs are excluded from the term ''owner'' for these purposes.

3. The ECO's compensation is not based on performance of any BlackRock Entity or MPS, although a portion of the ECO's compensation may be provided in the form of BlackRock stock or stock equivalents;

4. The ECO can be terminated by BlackRock only with the approval of the IM;

5. The EPPs prohibit any officer, director or employee of BlackRock or any MPS or any person acting under such person's direction from directly or indirectly taking any action to coerce, manipulate, mislead, or fraudulently influence the ECO or any member of the ECO Function in the performance of his or her duties;

6. The ECO is responsible for monitoring Covered Transactions and shall determine whether Violations have occurred, and the appropriate correction thereof, consistent with the requirements of Section V of this exemption;

7. If the ECO determines a Violation has occurred, the ECO must determine why it occurred and what steps should be taken to avoid such a Violation in the future (*e.g.,* additional training, additional procedures, additional monitoring, or additional and/or changed processes or systems);

8. The ECO is responsible for monitoring and overseeing the implementation of the EPPs and carrying out such other responsibilities stipulated or described in Section III of this exemption. The ECO may delegate such responsibilities to the ECO Function, but the ECO will remain responsible for monitoring and overseeing the ECO Function's implementation of the EPPs. When appropriate, the ECO will recommend changes to the EPPs to BlackRock and the IM. The ECO will consult with the IM regarding the need for, timing, and form of EPP Corrections;

9. The ECO, with the assistance of the ECO Function, carries out the responsibilities required of the ECO described in: (a) The definition of ''Index'' in this exemption and (b) with respect to loans of Securities to an MPS in Section III.L. of this exemption;

10. The ECO, with the assistance of the ECO Function, monitors Covered Transactions and situations resulting from Covered Transactions with or involving an MPS with respect to which, because of the investment of the MPS in BlackRock, an action or inaction on the part of a BlackRock Manager might be thought to be motivated by an interest which may affect the exercise of such BlackRock Manager's best judgment as a fiduciary. If a situation is identified by the ECO which poses the potential for a conflict, as specified in Section III of this exemption, the ECO shall consult with the IM, or refer decision-making to the discretion of the IM;

11. The ECO provides a quarterly report to the IM summarizing the material activities of the ECO for the preceding quarter and setting forth any Violations discovered during the quarter and actions taken to correct such Violations. With respect to Violations, the ECO report details changes to process put in place to guard against a substantially similar Violation occurring again, and recommendations for additional training, additional procedures, additional monitoring, or additional and/or changed processes or systems or training changes and BlackRock management's actions on such recommendations. In connection with providing the quarterly report for the second quarter and fourth quarter of each year, upon the request of the IM, the ECO and the IM shall meet in person to review the content of the report. Other members of the ECO Function may attend such meetings at the request of either the ECO or the IM;

12. In each quarterly report, the ECO certifies in writing to his or her knowledge that (a) the quarterly report is accurate; (b) BlackRock's compliance program is working in a manner which is reasonably designed to prevent Violations; (c) any Violations discovered during the quarter and the related corrections taken to date have been identified in the report; and (d) BlackRock has complied with the EPPs in all material respects;

13. No less frequently than annually, the ECO certifies to the IM as to whether BlackRock has provided the ECO with adequate resources, including, but not limited to, adequate staffing of the ECO Function, and, in connection with the quarterly report for the fourth quarter of each year, the ECO shall identify to the IM those BlackRock Managers that relied upon this exemption during the prior year and those that the ECO reasonably anticipates relying on this exemption during the current year; and

14. The ECO or ECO Function provides any further information regarding Covered Transactions that is reasonably requested by the IM.

E. *Independent Monitor.* BlackRock retains an Independent Monitor (IM) with respect to the Covered Transactions. If the IM resigns or is removed, BlackRock shall appoint a successor IM within a reasonable period of time, not to exceed thirty (30) days. The IM:

1. Agrees in writing to serve as IM, and he or she is independent within meaning of Section VI.TT.;

2. Approves the ECO selected by BlackRock, and as part of the approval process and annually thereafter approves in general terms the reasonableness of the ECO's compensation, taking into account such information as the IM may request of BlackRock and which BlackRock must supply, and approves any termination of the ECO by BlackRock;

3. Assists in the development of, and the granting of written approval of, the EPPs and any material alterations of the EPPs by determining that they are reasonably designed to achieve the goals of (a) compliance with the terms of the exemption, (b) ensuring BlackRock's decision-making with respect to Covered Transactions on behalf of Client Plans with MPSs or BlackRock Entities is done in the interests of the Client Plans and their respective participants and beneficiaries and, (c) requiring, to the extent possible, verification that the terms of such Covered Transactions are at least as favorable to the Client Plans as the terms generally available in comparable arm's length transactions with unrelated parties;

4. Consults with the ECO regarding the need for, timing and form of any EPP Corrections. The IM has the responsibilities with respect to corrections of Violations, as set forth in Section V of this exemption. In response to EPP Corrections or Violations, the IM considers whether, and must have the authority, to require further sampling, testing or corrective action if necessary;

5. Exercises discretion for Client Plans in situations specified in Section III of this exemption where BlackRock Managers may be thought to have conflicts;

6. Performs certain monitoring functions described in Section III, and carries out the responsibilities required of the IM, as set forth in the definition of ''Index'' in this exemption, and with respect to loans of Securities to an MPS as set forth in Section III.L. of this exemption, and carries out such other responsibilities stipulated in Section III of this exemption;

7. Reviews the quarterly reports of the ECO, obtains and reviews representative samples of the data underlying the quarterly reports of the ECO, and, if the IM deems it appropriate, obtains additional factual information on either an ad hoc basis or on a systematic basis;

8. Reviews the certifications of the ECO as to whether (a) the quarterly report is accurate; (b) BlackRock's compliance program is working in a

manner which is reasonably designed to prevent Violations; (c) any Violations discovered during the quarter and the related corrections taken to date have been identified in the report; (d) BlackRock has complied with the EPPs in all material respects; and (e) BlackRock has provided the ECO with adequate resources, including, but not limited to, adequate staffing of the ECO Function;

9. Determines, on the basis of the information supplied to the IM by BlackRock and the ECO or the ECO Function, whether there has occurred a pattern or practice of insufficient diligence in adhering to the EPPs and/or the conditions of the exemption, and if such a determination is made, reports the same to the Department, and informs BlackRock and the ECO of any such report;

10. Determines whether the purchases of equity Securities issued by an MPS on behalf of Client Plans that are Other Accounts or Funds by a BlackRock Manager has had a positive material impact on the market price for such Securities, notwithstanding any volume limitations imposed by Section III.R. of the exemption and/or imposed by the IM with respect to such equity Securities. The IM makes this determination based upon its review of the relevant monthly reports required by the exemption with respect to such Covered Transactions provided by the ECO and publicly available information materially related to the trading of the Securities of an MPS on its primary listing exchange (or market);

11. Issues an annual compliance report, to be timely delivered to (i) the Chairman of the Board, (ii) the Chief Executive Officer of BlackRock and (iii) the General Counsel of BlackRock. The annual compliance report shall be based on a review of the EPPs, the quarterly reports provided by the ECO, any transactions reviewed by the IM as well as any additional information the IM requests from BlackRock, and certifying to each of the following (or describing any exceptions thereto) that:

(a) The EPPs are reasonably designed to achieve the goals of (i) compliance with the terms of the exemption, (ii) ensuring BlackRock's decision-making with respect to Covered Transactions on behalf of Client Plans with MPSs or BlackRock Entities is done in the interests of the Client Plans and the respective participants and beneficiaries, and (iii) requiring to the extent possible, verification that the terms of any Covered Transaction are at least as favorable to Client Plans as the terms generally available in comparable arm's length transactions with unrelated parties;

(b) The EPPs and the other terms of the exemption were complied with, with any material exceptions duly noted;

(c) The IM has made the determination referred to in Section II.E.9. and the results of that determination;

(d) BlackRock has provided the ECO with adequate resources, including but not limited to adequate staffing of the ECO Function; and

(e) The compensation package for the ECO for the prior year is reasonable;

12. The annual compliance report of the IM, as described in Section II.E.11., shall contain a summary of Violations and a summary of any corrections of Violations required by the IM and/or the ECO at any time during the prior year. In addition, the IM further certifies that BlackRock correctly implemented the prescribed corrections, based in part on certification from the ECO; and

13. The annual compliance report of the IM shall also be timely delivered by the IM to the chief executive officer, the general counsel and the members of the board of directors of each of the BlackRock Managers identified to the IM by the ECO or ECO Function as having relied upon this exemption during the prior year and those that the ECO reasonably anticipates will be relying on this exemption during the current year. The copies of the compliance report described in this Section II.E.13. shall be accompanied by a cover letter from the IM calling the attention of the recipients to any Violations, material exceptions to compliance with the EPPs, or other shortfalls in compliance with the exemption to assist such officers and directors in carrying out their respective responsibilities.

Section III: Covered Transactions

A. *Purchases and Holdings by BlackRock Managers of Fixed Income Obligations Issued by an MPS in an Underwriting on Behalf of Client Plans Invested in an Index Account or Fund, or in a Model-Driven Account or Fund.* Relief under Section I of this exemption is available for a purchase and holding by BlackRock Managers of Fixed Income Obligations issued by an MPS in an underwriting on behalf of Client Plans for an Index Account or Fund, or a Model-Driven Account or Fund, provided that:

1. Such purchase is for the sole purpose of maintaining quantitative conformity with the weight of such Securities prescribed by the relevant Index, for Index Accounts or Funds, or the weight of such Securities prescribed by the relevant Model, for Model-Driven Accounts or Funds; and such purchase is reasonably calculated not to exceed the purchase amount necessary for such Model or quantitative conformity by more than a *de minimis* amount;

2. Such purchase is not made from any MPS;

3. No BlackRock Entity is in the selling syndicate;

4. After purchase, the responsible BlackRock Manager notifies the ECO if circumstances arise in which an action or inaction on the part of the BlackRock Manager regarding an MPS Fixed Income Obligation so acquired might be thought to be motivated by an interest which may affect the exercise of such BlackRock Manager's best judgment as a fiduciary, and complies with decisions of the ECO regarding the taking, or the refraining from taking, of actions in such circumstances; and

5. After purchase, any decision regarding conversion of an MPS Fixed Income Obligation into equity in the MPS is made by the IM.

B. *Purchase and Holding by BlackRock Managers of Fixed Income Obligations Issued by an MPS in an Underwriting on Behalf of Client Plans Invested in an Other Account or Fund.* Relief under Section I of this exemption is available for a purchase and holding by BlackRock Managers of Fixed Income Obligations issued by an MPS in an underwriting on behalf of Client Plans invested in an Other Account or Fund provided that:

1. The conditions of Section IV.A. of this exemption are satisfied, except that for purposes of Section IV.A.4.(a) and Section IV.A.5.(c), the MPS-issued Fixed Income Obligations at the time of purchase must be rated in one of the three highest rating categories by a Rating Organization and none of the Rating Organizations may rate the Fixed Income Obligations lower than in the third highest rating category;

2. Such purchase is not made from an MPS;

3. No BlackRock Entity is in the selling syndicate;

4. After purchase, the responsible BlackRock Manager notifies the ECO if circumstances arise in which an action or inaction on the part of the BlackRock Manager regarding an MPS Fixed Income Obligation so acquired might be thought to be motivated by an interest which may affect the exercise of such BlackRock Manager's best judgment as a fiduciary, and complies with decisions of the ECO regarding the taking, or the refraining from taking, of actions in such circumstances; and

5. After purchase, any decision regarding conversion of an MPS Fixed Income Obligation into equity in the MPS is made by the IM.

C. *Certain Transactions in the Secondary Market by BlackRock Managers of Fixed Income Obligations including Fixed Income Obligations Issued by and/or Traded with an MPS, and/or Under Which an MPS has Either an Ongoing Function or Can Potentially Incur Liability.* Relief under Section I of this exemption is available for a purchase or sale in the secondary market or the holding by BlackRock Managers on behalf of Client Plans of (i) Fixed Income Obligations issued by an MPS, (ii) Fixed Income Obligations issued by a third party or an MPS and purchased from or sold to an MPS, and/or (iii) Fixed Income Obligations under which an MPS has either an ongoing function or can potentially incur liability, provided that:

1. If the Fixed Income Obligations are purchased from or sold to an MPS, it is as a result of the Three Quote Process.

2. With respect to Fixed Income Obligations that are issued by an MPS and are purchased and held by a BlackRock Manager for a Client Plan –

(a) After purchase, the responsible BlackRock Manager notifies the ECO if circumstances arise in which an action or inaction on the part of the BlackRock Manager regarding an MPS Fixed Income Obligation so acquired might be thought to be motivated by an interest which may affect the exercise of such BlackRock Manager's best judgment as a fiduciary, and complies with the decisions of the ECO regarding the taking, or the refraining from taking, of actions in such circumstances;

(b) After purchase, any decision regarding conversion of an MPS Fixed Income Obligation into equity in the MPS is made by the IM; and

(c) If purchased for an Index Account or Fund, or a Model-Driven Account or Fund, such purchase is for the sole purpose of maintaining quantitative conformity with the weight of such Securities prescribed by the relevant Index, for Index Accounts or Funds, or the weight of such Securities prescribed by the relevant Model, for Model-Driven Accounts or Funds and such purchase is reasonably calculated not to exceed the purchase amount necessary for such Model or quantitative conformity by more than a *de minimis* amount.

3. With respect to Fixed Income Obligations (whether or not issued by an MPS) held by a BlackRock Manager for a Client Plan under which an MPS has an ongoing function, such as servicing of collateral for asset-backed debt, or the potential for liability, such as under representations or warranties made by an MPS with respect to collateral for such asset-backed debt which the MPS originated, the taking of or refraining from taking any action by the responsible BlackRock Manager which could have a material positive or negative effect upon the MPS is decided upon by the ECO.

4. With respect to any Fixed Income Obligation acquired under this Section III.C. which is a guaranteed governmental mortgage pool certificate within the meaning of 29 CFR 2510.3–101(i) which is accompanied by an implicit U.S. Government guarantee as opposed to an explicit U.S. Government guarantee, (a) the BlackRock Manager initiating a purchase of such Securities makes a determination that such Securities are of substantially similar credit quality as guaranteed governmental mortgage pool certificates accompanied by an explicit U.S. Government guarantee, (b) the ECO (in regular consultation with and under the supervision of the IM) monitors the credit spread between such implicitly and explicitly guaranteed certificates, and (c) each of the ECO and the IM (independently) has the authority and responsibility to determine whether purchases of implicitly guaranteed certificates should not be permitted due to such credit spread, and such authority and responsibility is reflected in the EPPs.

5. For purposes of this Section III.C., Asset-Backed Securities are not Fixed Income Obligations.

D. *Purchase in an Underwriting and Holding by BlackRock Managers of Fixed Income Obligations Issued by a Third Party when an MPS is Underwriter, in Either a Manager or a Member Capacity, and/or Under Which an MPS has Either an Ongoing Function or Can Potentially Incur Liability.* Relief under Section I of this exemption is available for the purchase and holding by BlackRock Managers of Fixed Income Obligations issued by third parties in an underwriting when an MPS is an underwriter, in either a manager or a member capacity, and/or Fixed Income Obligations under which an MPS has either an ongoing function or can potentially incur liability, provided that:

1. The conditions of Section IV.A. are satisfied.

2. Such purchase is not made from an MPS.

3. No BlackRock Entity is in the selling syndicate.

4. With respect to Fixed Income Obligations under which an MPS has either an ongoing function, such as debt trustee, servicer of collateral for asset–backed debt, or the potential for liability, such as under representations or warranties made by an MPS with respect to collateral for such asset-backed debt which the MPS originated, the taking of or refraining from taking any action by the responsible BlackRock Manager which could have a material positive or negative effect upon the MPS is decided upon by the ECO.

5. With respect to any Fixed Income Obligation acquired under this Section III.D. which is a guaranteed governmental mortgage pool certificate within the meaning of 29 CFR 2510.3–101(i) which is accompanied by an implicit U.S. Government guarantee as opposed to an explicit U.S. Government guarantee, (a) the BlackRock Manager initiating a purchase of such Securities makes a determination that such Securities are of substantially similar credit quality as guaranteed governmental mortgage pool certificates accompanied by an explicit U.S. Government guarantee, (b) the ECO (in regular consultation with and under the supervision of the IM) monitors the credit spread between such implicitly and explicitly guaranteed certificates, and (c) each of the ECO and the IM (independently) has the authority and responsibility to determine whether purchases of implicitly guaranteed certificates should not be permitted due to such credit spread, and such authority and responsibility is reflected in the EPPs.

6. For purposes of this Section III.D., Asset-Backed Securities are not Fixed Income Obligations.

E. *Purchase in an Underwriting and Holding by BlackRock Managers of Asset-Backed Securities, when an MPS is an Underwriter, in the Capacity as Either a Manager or a Member of the Selling Syndicate, Trustee, or, in the Case of Asset-Backed Securities Which are CMBS, Servicer.* Relief under Section I of this exemption is available for the purchase and holding by BlackRock Managers of Asset-Backed Securities issued in an underwriting where an MPS is (i) An underwriter, in the capacity as either a manager or a member of the selling syndicate, (ii) trustee, or (iii) solely in the case of Asset-Backed Securities which are CMBS, serves as servicer of a trust that issued such CMBS, provided that:

1. The conditions of Section IV.A. are satisfied, except that (a) for purposes of Section IV.A.4.(a), the Asset-Backed Securities at the time of purchase must be rated in one of the three highest rating categories by a Rating Organization and none of the Rating Organizations may rate the Asset-Backed Securities lower than the third highest rating category, (b) in the case of

Asset-Backed Securities which are CMBS and for which the MPS is servicer, the conditions of Section IV.B. are satisfied instead of the conditions of Section IV.A., and (c) if an MPS is an underwriter and an MPS is a servicer as described in clause (b), the conditions of both Section IV.A., as modified by Section III.E.1.(a), and Section IV.B. must be satisfied;

2. Such purchase is not made from an MPS;

3. No BlackRock Entity is in the selling syndicate;

4. In the case of Asset-Backed Securities with respect to which an MPS has either an ongoing function, such as trustee, servicer of collateral for CMBS, or the potential for liability, such as under representations or warranties made by an MPS with respect to collateral for CMBS which collateral the MPS originated, the taking of or refraining from taking of any action by a responsible BlackRock Manager which could have a material positive or negative effect upon the MPS is decided upon by the ECO; and

5. The purchase meets the conditions of an applicable Underwriter Exemption.

F. *Purchase and Holding by BlackRock Managers of Equity Securities Issued by an Entity which is not an MPS and is Not a BlackRock Entity, in an Underwriting when an MPS is an Underwriter, in either a Manager or a Member Capacity.* Relief under Section I of this exemption is available for the purchase and holding by BlackRock Managers of equity Securities issued by an entity which is not an MPS and which is not a BlackRock Entity in an underwriting when an MPS is an underwriter, in either a manager or a member capacity, provided that:

1. The conditions of Section IV.A. are satisfied;

2. Such purchase is not made from an MPS;

3. No BlackRock Entity is in the selling syndicate; and

4. The Securities are not Asset-Backed Securities.

G. *Purchase and Sale by BlackRock Managers of Asset-Backed Securities in the Secondary Market, from or to an MPS, and/or when an MPS is Sponsor, Servicer, Originator, Swap Counterparty, Liquidity Provider, Trustee or Insurer, and the Holding Thereof.* Relief under Section I of this exemption is available for a sale of Asset-Backed Securities by a BlackRock Manager to an MPS, or the purchase of Asset-Backed Securities by BlackRock Managers from an MPS and the holding thereof, and/or any such purchase or sale in the secondary market or holding when an MPS is a sponsor, a servicer, an originator, a swap counterparty, a liquidity provider, a trustee or an insurer, provided that:

1. If the Asset-Backed Securities are purchased from or sold to an MPS, the purchase or sale is as a result of the Three Quote Process.

2. Regardless of from whom the BlackRock Manager purchases the Asset-Backed Securities, the purchase and holding of the Asset-Backed Security otherwise meets the conditions of an applicable Underwriter Exemption.

3. Regardless of from whom the BlackRock Manager purchased the Asset-Backed Securities, if an MPS is, with respect to such Asset-Backed Securities, a sponsor, servicer, originator, swap counterparty, liquidity provider, insurer or trustee, as those terms are utilized or defined in the Underwriter Exemptions, and circumstances arise in which the taking of or refraining from taking of any action by the responsible BlackRock Manager could have a material positive or negative effect upon the MPS, the taking of or refraining from taking of any such action is decided upon by the ECO.

H. *Repurchase Agreements when an MPS is the Seller.* Section I of this exemption applies to an investment by a BlackRock Manager of Client Plan assets which involves the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of a Client Plan of a repurchase agreement (or Securities or other instruments under cover of a repurchase agreement) in which the seller of the underlying Securities or other instruments is an MPS which is a bank supervised by the United States or a State, a broker-dealer registered under the 1934 Act, or a dealer who makes primary markets in Securities of the United States government or any agency thereof, or in banker's acceptances, and reports daily to the Federal Reserve Bank of New York its positions with respect to these obligations, provided that each of the following conditions are satisfied:

1. The repurchase agreement is embodied in, or is entered into pursuant to a written agreement, and such written agreement is a standardized industry form;

2. The repurchase agreement has a term of one year or less;

3. The Client Plan receives interest no less than that which it would receive in a comparable arm's length transaction with an unrelated party;

4. The Client Plan receives Securities, banker's acceptances, commercial paper or certificates of deposit having a market value equal to not less than one hundred percent (100%) of the purchase price paid by the Client Plan;

5. Upon expiration of the repurchase agreement and return of the Securities or other instruments to the seller, the seller transfers to the Client Plan an amount equal to the purchase price plus the appropriate interest;

6. The Securities, banker's acceptances, commercial paper or certificates of deposit received by the Client Plan:

(a) Could be acquired directly by the Client Plan in a transaction not covered by this Section III.H. without violating ERISA sections 406(a)(1)(E), 406(a)(2) or 407(a); and,

(b) If the Securities are subject to the provisions of the 1933 Act, they are obligations that are not ''restricted securities'' within the meaning of Rule 144 under the 1933 Act.

7. If the market value of the underlying Securities or other instruments falls below the purchase price at any time during the term of the agreement, the Client Plan may, under the written agreement required by Section III.H.1., require the MPS seller to deliver, by the close of business on the following business day (as such term is defined for purposes of the relevant written agreement), additional Securities or other instruments the market value of which, together with the market value of Securities or other instruments previously delivered or sold to the Client Plan under the repurchase agreement, equals at least one hundred percent (100%) of the purchase price paid by the Client Plan.

8. If the MPS seller does not deliver additional Securities or other instruments as required above, the Client Plan may terminate the agreement, and, if upon termination or expiration of the agreement, the amount owing is not paid to the Client Plan, the Client Plan may sell the Securities or other instruments and apply the proceeds against the obligations of the MPS seller under the agreement, and against any expenses associated with the sale.

9. The MPS seller agrees to furnish the Client Plan with the most recent available audited statement of its financial condition as well as its most recent available unaudited statement, agrees to furnish additional audited and unaudited statements of its financial condition as they are issued and either: (a) Agrees that each repurchase agreement transaction pursuant to the agreement shall constitute a representation by the MPS seller that there has been no material adverse change in its financial condition since

the date of the last statement furnished that has not been disclosed to the Client Plan with whom such written agreement is made; or (b) prior to each repurchase agreement transaction, the MPS seller represents that, as of the time the transaction is negotiated, there has been no material adverse change in its financial condition since the date of the last statement furnished that has not been disclosed to the Client Plan with whom such written agreement is made.

10. In the event of termination and sale as described in Section III.H.9., the MPS seller pays to the Client Plan the amount of any remaining obligations and expenses not covered by the sale of the Securities or other instruments, plus interest at a reasonable rate.

11. If an MPS seller involved in a repurchase agreement covered by this exemption fails to comply with any condition of this exemption in the course of engaging in the repurchase agreement, the BlackRock Manager who caused the plan to engage in such repurchase agreement shall not be deemed to have caused the plan to engage in a transaction prohibited by ERISA sections 406(a)(1)(A) through (D) or ERISA section 406(b), Code section 4975, or FERSA section 8477(c) solely by reason of the MPS seller's failure to comply with the conditions of the exemption.

12. In the event of any dispute between a BlackRock Manager and an MPS seller involving a Covered Transaction under this Section III.H., the IM has the responsibility to decide whether, and if so how, BlackRock is to pursue relief on behalf of the Client Plan(s) against the MPS seller.

13. At time of entry into or renewal of each Covered Transaction under this Section III.H., including both term repurchase transactions and daily renewals for ''open'' or ''overnight'' transactions, either (a) each Covered Transaction under this Section III.H., is as a result of the Three Quote Process, or, (b) the BlackRock Manager determines that the yield on the proposed transaction, or the renewal thereof, is at least as favorable to the Client Plans as the yield of the Client Plan on two (2) other available transactions which are comparable in terms of size, collateral type, credit quality of the counterparty, term and rate. The methodology employed for purposes of the comparison in (b) above must (c) be approved in advance by the ECO Function and (d), to the extent possible, refer to objective external data points, such as the Eurodollar overnight time deposit bid rate, the rate for repurchase agreements with U.S. government Securities, or rates for commercial paper issuances or agency discount note issuances sourced from Bloomberg, or another third party pricing service or market data provider (which providers may use different terminology to refer to these same external data points). The applicable BlackRock Manager must record a description of the comparable transactions, if reliance is placed upon same, and such data must be periodically reviewed by the ECO Function. The procedures described in this Section III.H.13. must be designed to ensure that BlackRock Managers determine to only enter into Covered Transactions with MPS sellers which are in the interests of Plan Clients, and such procedures must be reviewed and may be commented on by the IM.

14. Neither the MPS Seller nor a member of the same MPS Group as the MPS Seller has discretionary authority or control with respect to the investment of Client Plan assets involved in a Covered Transaction under this Section III.H; provided that, this condition will be deemed met if a Client Plan meets the condition of Section II.A.2. by reason of Section II.A.3. of this exemption.

15. The Client Plan is not an MPS Plan of the MPS with whom the purchase or sale takes place, or an MPS Plan of another MPS member of the same MPS Group as such MPS; provided that, this condition will be deemed met if a Client Plan meets the condition of Section II.A.2. by reason of Section II.A.3. of this exemption.

I. *Responding to Tender Offers and Exchange Offers Solicited by an MPS.* Relief under Section I of this exemption is available for participation by BlackRock Managers on behalf of Client Plans in tender offers or exchange offers or similar transactions where an MPS acts as agent for the entity (which entity may not be an MPS) making the offer, provided that:

1. The Client Plan pays no fees to the MPS in connection with this Covered Transaction;

2. The BlackRock Manager submits to the ECO in advance of participation a written explanation of the reasons for such participation; and

3. The ECO Function determines that the reasons for participation by the BlackRock Manager in the Covered Transaction are appropriate from the vantage point of the Client Plans, with such determination affirmatively made in writing prior to the BlackRock Manager participating in the Covered Transactions under this Section III.I.

J. *Purchase in Underwritings of Securities Issued by an Entity Which Is Not an MPS When the Proceeds Are Used To Repay a Debt to an MPS.* Relief under Section I of this exemption is available for the purchase by BlackRock Managers of Securities in underwritings issued by an entity which is not an MPS, but where the proceeds of the offering are used to repay a debt owed to an MPS, and the payment of such proceeds to the MPS, provided that the BlackRock Manager does not know that the proceeds will be applied to the repayment of debt owed to an MPS. If the BlackRock Manager does know that proceeds of the offering will be applied to the repayment of debt owed to an MPS, the purchase of the Securities and the payment of the proceeds to the MPS are exempt under Section I of this exemption provided that no more than twenty percent (20%) of the offering is purchased by BlackRock Managers for Client Plans, and no more than fifty percent (50%) of the offering in the aggregate is purchased by BlackRock, BlackRock Managers and other BlackRock Entities for Client Plans, other clients of BlackRock Managers, or as proprietary investments.

K. *Bank Deposits and Commercial Paper.* Relief under Section I of this exemption is available for an investment by a BlackRock Manager of Client Plan assets which involves the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of a Client Plan of certificates of deposit, time deposits or other bank deposits at an MPS and/or placed by an MPS and/or sold to or purchased from an MPS, or in commercial paper issued by an MPS or with respect to which an MPS acts in some continuing capacity such as placement agent or administrator and/or which is sold to or purchased from an MPS, provided that:

1. With respect to bank deposits, either:

(a)(i) The bank is supervised by the United States or a State, and at the outset of the Covered Transaction or renewal thereof of, such bank has a credit rating in one of the top two (2) categories by at least one of the Rating Organizations; and (ii) such deposit bears a reasonable interest rate, or—

(b) The BlackRock Manager and the MPS comply with ERISA section 408(b)(4).

2. With respect to commercial paper:

(a) The Client Plan is not an MPS Plan of the MPS issuing the commercial paper, provided that, this condition will be deemed to be met if such a Client Plan meets the conditions of Section II.A.2. and II.A.3. of this exemption;

(b) The commercial paper has a stated maturity date of nine (9) months or less from the date of issue, exclusive of days of grace, or is a renewal of an issue of

commercial paper the maturity of which is likewise limited;

(c) At the time it is acquired, the commercial paper is ranked in one of the two (2) highest rating categories by at least one of the Rating Organizations;

(d) If the seller or purchaser of the commercial paper is an MPS, purchases and sales are made pursuant to the Three Quote Process, provided that for purposes of this Section III.K.2., firm quotes on comparable short-term money market instruments rated in the same category may be used for purposes of the Three Quote Process; and

(e)(i) The Client Plan is not an MPS Plan of the MPS with whom the purchase or sale takes place, or an MPS Plan of another MPS member of the same MPS Group as such MPS; and (ii) the Client Plan is not an MPS Plan of an MPS which is acting in a continuing capacity, or an MPS Plan of another member of the same MPS Group as such MPS, provided that, the conditions set forth in clauses (i) and (ii) of this Section III.K.2.(e) will be deemed met if a Client Plan meets the condition of Section II.A.2. by reason of Section II.A.3. of this exemption.

3. Neither the MPS involved in the Covered Transaction nor any member of the same MPS Group as the MPS involved in the Covered Transaction has discretionary authority or control with respect to the investment of Client Plan assets involved in the Covered Transaction under this Section III.K.; provided that, this condition will be deemed met if a Client Plan meets the condition of Section II.A.2. by reason of Section II.A.3. of this exemption.

4. For purposes of the Covered Transactions set forth in this Section III.K. no BlackRock Entity shall be regarded as an affiliate of an MPS bank at which a deposit is made of Client Plan assets, nor of an MPS issuer of commercial paper in which a BlackRock Manager invests Client Plan assets.

L. *Securities Lending to an MPS.*

1. Relief under Section I of this exemption is available for:

(a) The lending of Securities by a BlackRock Manager that are assets of an Index Account or Fund or a Model-Driven Account or Fund to an MPS which is a U.S. Broker-Dealer or a U.S. Bank provided that the conditions set forth in Section III.L.2. are met;

(b) The lending of Securities by a BlackRock Manager that are assets of an Index Account or Fund or a Model-Driven Account or Fund to an MPS which is a Foreign Broker-Dealer or Foreign Bank; provided that, the conditions set forth in Section III.L.2. and Section III.L.3. below are met; and

(c) The payment to a BlackRock Manager of compensation for services rendered in connection with loans of assets of an Index Account or Fund or a Model-Driven Account or Fund that are Securities to an MPS; provided that, the conditions set forth in Section III.L.4. below are met.

2. General Conditions for Covered Transactions Described in Sections III.L.1.(a) and (b).

(a) The length of a Securities loan to an MPS does not exceed one year in term.

(b) Neither the MPS borrower nor any MPS which is a member of the same MPS Group as the MPS borrower has or exercises discretionary authority or control with respect to the investment of the Client Plan assets involved in the transaction. This Section III.L.2.(b) shall be deemed satisfied notwithstanding the investment of the assets of an MPS Plan of the MPS which is the borrower under such Securities lending transaction in a Pooled Fund as of the date of the Acquisition, which Pooled Fund is a bank-maintained common or collective trust, provided that such assets when aggregated with the assets of all other MPS Plans of the same MPS Group as that of the MPS borrower and invested in such Pooled Fund, at all times since the date of the Acquisition, constitute less than ten percent (10%) of the assets of such Pooled Fund; provided that, this Subsection III.L.2.(b) will be deemed met if a Client Plan meets the condition of Section II.A.2. by reason of Section II.A.3. of this exemption.[34]

(c) The Client Plan receives from the MPS borrower by the close of the BlackRock Manager's business on the day in which the Securities lent are delivered to the MPS,

(i) U.S. Collateral having, as of the close of business on the preceding business day, a market value, or, in the case of bank letters of credit, a stated amount, equal to not less than one hundred percent (100%) of the then market value of the Securities lent; or

(ii) Foreign Collateral having as of the close of business on the preceding business day, a market value, or, in the case of bank letters of credit, a stated amount, equal to not less than:

(x) One hundred two percent (102%) of the then market value of the Securities lent as valued on a Recognized Securities Exchange or an Automated Trading System on which the Securities are primarily traded if the collateral posted is denominated in the same currency as the Securities lent, or

(y) One hundred five percent (105%) of the then market value of the Securities lent as valued on a Recognized Securities Exchange or an Automated Trading System on which the Securities are primarily traded if the collateral posted is denominated in a different currency than the Securities lent.

(d) Notwithstanding the foregoing, if the BlackRock Manager is a U.S. Bank, a Registered Investment Advisor, or a U.S. Broker-Dealer, and such BlackRock Manager indemnifies the Client Plan with respect to the difference, if any, between the replacement cost of the borrowed Securities and the market value of the collateral on the date of a borrower default, the Client Plan receives from the MPS borrower by the close of the BlackRock Manager's business on the day in which the Securities lent are delivered to the borrower, Foreign Collateral having as of the close of business on the preceding business day, a market value, or, in the case of bank letters of credit, a stated amount, equal to not less than:

(i) One hundred percent (100%) of the then market value of the Securities lent as valued on a Recognized Securities Exchange or an Automated Trading System on which the Securities are primarily traded if the collateral posted is denominated in the same currency as the Securities lent; or

(ii) One hundred one percent (101%) of the then market value of the Securities lent as valued on a Recognized Securities Exchange or an Automated Trading System on which the Securities are primarily traded if the collateral posted is denominated in a different currency than the Securities lent and such currency is denominated in Euros, British pounds, Japanese yen, Swiss francs or Canadian dollars; or

(iii) One hundred five percent (105%) of the then market value of the Securities lent as valued on a Recognized Securities Exchange or an Automated Trading System if the collateral posted is denominated in a different currency than the Securities lent and such currency is other than those specified above.

(e) (i) If the MPS borrower is a U.S. Bank or U.S. Broker-Dealer, the Client Plan receives such U.S. Collateral or Foreign Collateral from the MPS borrower by the close of the BlackRock Manager's business on the day in which the Securities are delivered to the MPS borrower. Such collateral is received by the Client Plan either by physical delivery, wire transfer or by book entry in a Securities depository located in the United States, or,

[34] For this purpose, MPS plans of Barclays MPSs and PNC MPSs are separately aggregated.

(ii) If the MPS borrower is a Foreign Bank or Foreign Broker-Dealer, the Client Plan receives U.S. Collateral or Foreign Collateral from the MPS borrower by the close of the BlackRock Manager's business on the day in which the Securities are delivered to the borrower. Such collateral is received by the Client Plan either by physical delivery, wire transfer or by book entry in a Securities depository located in the United States or held on behalf of the Client Plan at an Eligible Securities Depository. The indicia of ownership of such collateral shall be maintained in accordance with ERISA section 404(b) and 29 CFR 2550.404b–1.

(f) Prior to making of any such loan, the MPS borrower shall have furnished the BlackRock Manager with:

(i) The most recent available audited statement of the MPS borrower's financial condition, as audited by a United States certified public accounting firm or in the case of an MPS borrower that is a Foreign Broker-Dealer or Foreign Bank, a firm which is eligible or authorized to issue audited financial statements in conformity with accounting principles generally accepted in the primary jurisdiction that governs the borrowing MPS Foreign Broker-Dealer or Foreign Bank;

(ii) The most recent available unaudited statement of its financial condition (if the unaudited statement is more recent than such audited financial statement); and

(iii) A representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statement furnished to the BlackRock Manager that has not been disclosed to the BlackRock Manager. Such representations may be made by the MPS borrower's agreement that each loan shall constitute a representation by the MPS borrower that there has been no such material adverse change.

(g) The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the Client Plan as an arm's-length transaction with an unrelated party would be. Such loan agreement states that the Client Plan has a continuing security interest in, title to, or the rights of secured creditor with respect to the collateral. Such agreement may be in the form of a master agreement covering a series of Securities lending transactions.

(h) The written loan agreement must be a standardized industry form; provided, that, with the approval of the ECO on or about the date of the Acquisition, written loan agreements with an MPS borrower that were in effect as of the date of the Acquisition may continue to be used until there is a material modification of the same, at which time standardized industry forms must be adopted.

(i) In return for lending Securities, the Client Plan:

(i) Receives a reasonable fee (in connection with the Securities lending transaction), and/or

(ii) Has the opportunity to derive compensation through the investment of the currency collateral. Where the Client Plan has that opportunity, the Client Plan may pay a loan rebate or similar fee to the MPS borrower, if such fee is not greater than the Client Plan would pay in a comparable transaction with an unrelated party.

(j) All fees and other consideration received by the Client Plan in connection with the loan of Securities are reasonable. The identity of the currency in which the payment of fees and rebates will be made is set forth in either the written loan agreement or the loan confirmation as agreed to by the MPS borrower and the BlackRock Manager prior to the making of the loan.

(i) Pricing of a loan to an MPS borrower is based on (i) rates for comparable loans of the same Security to non-MPS borrowers and (ii) third-party market data:

(x) For loans of liquid Securities (sometimes referred to as general collateral loans), an automatic system may be used to price loans so long as the resulting rate the Client Plan receives from the MPS borrower is at least as favorable to the Client Plan as the rate the BlackRock Managers are receiving for Client Plans or other clients from non-MPS borrowers of the same Security;

(y) For purposes of pricing loans of less liquid Securities (sometimes referred to as ''special loans''), and for purposes of determining whether to terminate or continue a loan which does not have a set term, pricing may also be based on a BlackRock trader determination that continuing the loan is in the interest of the Client Plan based on all relevant factors, including price (provided that price is within the range of prices of other loans of the same Security to comparable non-MPS borrowers by BlackRock Managers for Client Plans or other clients) and potential adverse consequences to the Client Plan of terminating the loan, provided that the pricing data used in making these decisions is retained and made available for possible review by the ECO.

(ii) Automatic pricing mechanisms and pricing decisions by traders are subject to ongoing periodic review by the ECO Function, and the results of such review are included in reports by the ECO to the IM. Specifically, the quarterly reports by the ECO to the IM must address the lending patterns of illiquid Securities to the MPS borrowers from all Client Plans, including the percentage that loans of such Securities to the MPSs represent of all loans of such Securities from all Client Plans.

(k) The Client Plan receives the equivalent of all distributions made to holders of the borrowed Securities during the term of the loan including, but not limited to, dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional Securities;

(l) If the market value of the collateral at the close of trading on a business day is less than the applicable percentage of the market value of the borrowed Securities at the close of trading on that day (as described in this Section III.L.2.(c) of this exemption), then the MPS borrower shall deliver, by the close of business on the following business day, an additional amount of U.S. Collateral or Foreign Collateral the market value of which, together with the market value of all previously delivered collateral, equals at least the applicable percentage of the market value of all the borrowed Securities as of such preceding day.

Notwithstanding the foregoing, part of the U.S. Collateral or Foreign Collateral may be returned to the MPS borrower if the market value of the collateral exceeds the applicable percentage (described in this Section III.L.2.(c) of this exemption) of the market value of the borrowed Securities, as long as the market value of the remaining U.S. Collateral or Foreign Collateral equals at least the applicable percentage of the market value of the borrowed Securities.

(m) The loan may be terminated by the Client Plan at any time, whereupon the MPS borrower shall deliver certificates for Securities identical to the borrowed Securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed Securities) to the Client Plan within the lesser of:

(i) The customary delivery period for such Securities,

(ii) Five business days, or

(iii) The time negotiated for such delivery by the BlackRock Manager for the Client Plan, and the borrower.

(n) In the event that the loan is terminated, and the MPS borrower fails to return the borrowed Securities or the equivalent thereof within the applicable time described in Section III.M.2.(m), the BlackRock Manager for the Client

Plan may, under the terms of the loan agreement:

(i) Purchase Securities identical to the borrowed Securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the borrower under the agreement, and any expenses associated with the sale and/or purchase, and

(ii) The MPS borrower is obligated, under the terms of the loan agreement, to pay, and does pay to the Client Plan the amount of any remaining obligations and expenses not covered by the collateral, including reasonable attorney's fees incurred by the Client Plan for legal action arising out of default on the loans, plus interest at a reasonable rate.

Notwithstanding the foregoing, the MPS borrower may, in the event the MPS borrower fails to return borrowed Securities as described above, replace collateral, other than U.S. currency, with an amount of U.S. currency that is not less than the then current market value of the collateral, provided such replacement is approved by the BlackRock Manager.

(o) If the MPS borrower fails to comply with any provision of a loan agreement which requires compliance with this exemption, the BlackRock Manager who caused the Client Plan to engage in such transaction shall not be deemed to have caused the Client Plan to engage in a transaction prohibited by ERISA sections 406(a)(1)(A) through (D) or ERISA section 406(b) or FERSA section 8477(c) solely by reason of the borrower's failure to comply with the conditions of the exemption.

(p) If the Securities being loaned to an MPS borrower are managed in an Index Account or Fund, or a Model-Driven Account or Fund where the Index or the Model are created or maintained by the MPS borrower, the ECO Function periodically performs a review, no less frequently than quarterly, of the use of such MPS-sponsored Index or Model, and the Securities loaned from such an account or fund to the MPS, which review is designed to enable a reasonable judgment as to whether the use of such Index or Model, or any changes thereto, were for the purpose of benefitting BlackRock or the MPS through the Securities lending activity described in this Section III.L. If the ECO forms a reasonable judgment that the use of such Index or Model, or any changes thereto, were for the purpose of benefitting BlackRock or the MPS, the ECO shall promptly inform the IM.

(q) In the event of any dispute between the BlackRock Manager on behalf of a Client Plan and an MPS borrower involving a Covered Transaction under this Section III.L., the IM shall decide whether, and if so, how the BlackRock Manager is to pursue relief on behalf of the Client Plan(s) against the MPS borrower.

(r) Sophistication of Authorizing Fiduciary. Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend Securities to an MPS except as provided in clauses (1)–(3) below.

(1) Master Trusts. In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101, which entity is engaged in Securities lending arrangements with a BlackRock Manager, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) Single Authorizing Fiduciary for Multiple Unaffiliated Client Plans. In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101, which entity is engaged in Securities lending arrangements with such BlackRock Manager as securities lending agent, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity:

(A) Has full investment responsibility with respect to plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million; and

(3) Pooled Funds. In the case of two or more Client Plans invested in a Pooled Fund, whether or not through an entity described in paragraphs (r)(1) or (r)(2), the $50 million requirement shall be deemed satisfied if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by investors each having total net assets of at least $50 million. Such investors may include Client Plans, entities described in paragraphs (r)(1) or (r)(2), or other investors that are not employee benefit plans covered by section 406 of ERISA, section 4975 of the Code, or section 8477 of FERSA.

In addition, none of the entities described in this Section III.L.2.(r) are formed for the sole purpose of making loans of Securities.

(s) With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of Securities loans negotiated on behalf of Client Plans will be to borrowers unrelated to MPSs.

3. Specific Conditions for Transactions Described in Section III.L.1.(b).

(a) The BlackRock Manager maintains the written documentation for the loan agreement at a site within the jurisdiction of the courts of the United States.

(b) Prior to entering into a transaction involving an MPS Foreign Broker-Dealer that is described in Section VI.PP.(1) or (2) or an MPS Foreign Bank that is described in Section VI.OO.(1) either:

(i) The MPS Foreign Broker-Dealer or Foreign Bank agrees to submit to the jurisdiction of the United States; agrees to appoint an agent for service of process in the United States, which may be an affiliate (a Process Agent); consents to service of process on the Process Agent; and agrees that any enforcement by a Client Plan of its rights under the Securities lending agreement will, as the option of the Client Plan, occur exclusively in the United States courts; or

(ii) The BlackRock Manager, if a U.S. Bank, a Registered Investment Advisor, or U.S. Broker-Dealer, agrees to indemnify the Client Plan with respect to the difference, if any, between the replacement cost of the borrowed Securities and the market value of the collateral on the date of an MPS

borrower default plus interest and any transaction costs incurred (including attorney's fees of such Client Plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the Client Plan may incur or suffer directly arising out of a borrower default by the MPS Foreign Broker-Dealer or Foreign Bank.

(c) In the case of a Securities lending transaction involving an MPS Foreign Broker-Dealer that is described in Section VI.PP.(3) or an MPS Foreign Bank that is described in Section VI.OO.(2), the BlackRock Manager must be a U.S. Bank, a Registered Investment Advisor, or U.S. Broker-Dealer, and prior to entering into the loan transaction, such BlackRock Manager must agree to indemnify the Client Plan with respect to the difference, if any, between the replacement cost of the borrowed Securities and the market value of the collateral on the date of an MPS borrower default plus interest and any transaction costs incurred (including attorney's fees of such plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the Client Plan may incur or suffer directly arising out of a borrower default by the MPS Foreign Broker-Dealer or Foreign Bank.

4. Specific Conditions for Covered Transactions Described in Section III.L.1.(c):

(a) The loan of Securities is not prohibited by section 406(a) of ERISA or otherwise satisfies the conditions of this exemption.

(b) The BlackRock Manager is authorized to engage in Securities lending transactions on behalf of the Client Plan.

(c) The compensation, the terms of which are at least as favorable to the Client Plan as an arm's length transaction with an unrelated party, is reasonable and is paid in accordance with the terms of a written instrument, which may be in the form of a master agreement covering a series of Securities lending transactions.

(d) Except as otherwise provided in Section III.L.4.(f), the arrangement under which the compensation is paid:

(i) Is subject to the prior written authorization of a fiduciary of a Client Plan (the authorizing fiduciary), who is (other than in the case of an In-House Plan) independent of the BlackRock Manager, provided that for purposes of this Section III.M.4.(d) a fiduciary of an MPS Plan acting as the authorizing fiduciary shall be deemed independent of the BlackRock Manager so long as such fiduciary, as of the date of the authorization, is not a BlackRock Entity, and

(ii) May be terminated by the authorizing fiduciary within:

(x) The time negotiated for such notice of termination by the Client Plan and the BlackRock Manager, or

(y) Five business days, whichever is less, in either case without penalty to the Client Plan.

(e) No such authorization is made or renewed unless the BlackRock Manager shall have furnished the authorizing fiduciary with any reasonably available information which the BlackRock Manager reasonably believes to be necessary to determine whether such authorization should be made or renewed, and any other reasonably available information regarding the matter that the authorizing fiduciary may reasonably request.

(f) Special Rule for Commingled Investment Funds. In the case of a pooled separate account maintained by an insurance company qualified to do business in a State or a common or collective trust fund maintained by a bank or trust company supervised by a State or Federal agency, the requirements of Section III.L.4.(d) of this exemption shall not apply, provided that:

(i) The information described in Section III.L.4.(e) (including information with respect to any material change in the arrangement) shall be furnished by the BlackRock Manager to the authorizing fiduciary described in Section III.L.4.(d) with respect to each Client Plan whose assets are invested in the account or fund, not less than 30 days prior to implementation of the arrangement or material change thereto, and, where requested, upon the reasonable request of the authorizing fiduciary;

(ii) In the event any such authorizing fiduciary submits a notice in writing to the BlackRock Manager objecting to the implementation of, material change in, or continuation of the arrangement, the Client Plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the account or fund, without penalty to the Client Plan, within such time as may be necessary to effect such withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. In the case of a Client Plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a Client Plan electing to withdraw; and

(iii) In the case of a Client Plan whose assets are proposed to be invested in the account or fund subsequent to the implementation of the compensation arrangement and which has not authorized the arrangement in the manner described in Sections III.L.4.(f)(i) and (ii), the Client Plan's investment in the account or fund shall be authorized in the manner described in Section III.L.4.(d)(i).

M. *To-Be-Announced Trades (TBAs) of GNMA, FHLMC, FarmerMac or FNMA Mortgage-Backed Securities with an MPS Counterparty.* Relief under Section I of this exemption is available for trades (purchases and sales) on a principal basis of mortgage-backed Securities issued by FHLMC, FNMA, FarmerMac or guaranteed by GNMA and meeting the definition of ''guaranteed governmental mortgage pool certificate'' in 29 CFR 2510.3–101(i) with an MPS on a TBA basis, including, when applicable, delivery of the underlying Securities to a Client Plan, provided that:

1. The Covered Transactions under this Section III.M. are a result of the Three Quote Process; provided that, solely for purposes of this Section III.M.1., firm quotes under the Three Quote Process may be obtained on ''comparable Securities,'' as described below, when firm quotes with respect to the applicable TBA transactions are not reasonably obtainable;

2. With regard to purchases of FHLMC, FarmerMac and FNMA mortgage-backed Securities on a TBA basis, (i) the BlackRock Manager makes a determination that such Securities are of substantially similar credit quality as GNMA guaranteed governmental mortgage pool certificates, (ii) the ECO (in regular consultation with and under the supervision of the IM) monitors the credit spread between GNMA and FHLMC/FNMA/FarmerMac mortgage-backed Securities, and (iii) each of the ECO and the IM (independently) has the authority and responsibility to determine whether purchases of FHLMC, FarmerMac and/or FNMA mortgage-backed Securities on a TBA basis should not be permitted due to such credit spread, and such authority and responsibility is reflected in the EPPs; and

3. With regard to possible delivery of underlying Securities to Client Plans, as opposed to cash settlement, the ECO Function approves any such delivery in advance.

For purposes of Section III.M.1., ''comparable Securities'' are Securities that: (a) Are issued and/or guaranteed by the same agency, (b) have the same coupon, (c) have a principal amount at least equal to but no more than two percent (2%) greater than the Security

purchased or sold, (d) are of the same program or class, and (e) either (i) have an aggregate weighted average monthly maturity within a 12-month variance of the Security purchased or sold, but in no case can the variance be more than ten percent (10%) of such aggregate weighted average maturity of the Securities purchased or sold, or (ii) meet some other comparable objective standard containing a range of variance that is no greater than that described in (i) above and that assures that the aging of the Securities is properly taken into account.

N. *Foreign Exchange Transactions with an MPS Counterparty.* Relief under Section I of this exemption is available for a Foreign Exchange Transaction by a BlackRock Manager on behalf of Client Plans with an MPS as counterparty provided that:

1. (a) The Foreign Exchange Transaction is as a result of the Three Quote Process; or (b) if the total net amount of the Foreign Exchange Transaction on behalf of Client Plans by BlackRock Managers is greater than $1 million, the exchange rate is within 0.5% above or below the Interbank Rate as represented to the BlackRock Managers by the MPS;

2. The Foreign Exchange Transactions with an MPS counterparty only involve currencies of countries that are classified as ''developed'' or ''emerging'' markets by a third party Index provider that divides national economies into ''developed,'' ''emerging'' and ''frontier'' markets. The Index provider shall be selected by BlackRock, provided, however, the IM shall have the right to reject the Index provider in its sole discretion at any time; and

3. Each Foreign Exchange Transaction complying with Section III.N.1.(b) must be set forth in the applicable quarterly reports of the ECO to the IM.

O. *Agency Execution of Equity and Fixed Income Securities Trades and Related Clearing as Described in PTE 86–128, Including Agency Cross Trades, When the Broker is an MPS.* Relief under Section I of this exemption is available for transactions in Securities described in Section II of Prohibited Transaction Exemption 86–128, as amended [35] (PTE 86–128), as if BlackRock Managers and MPS broker-dealers were ''affiliates'' as defined in Section I.(b) of PTE 86–128, provided the following conditions are satisfied:

1. The MPS is selected to perform Securities brokerage services for Client Plans pursuant to the normal brokerage placement practices, policies and procedures of the BlackRock Manager designed to ensure best execution.

2. The conditions of PTE 86–128 set forth in the following sections of that exemption must be complied with: Section III(e); Section III(f); Section III(g)(2); and Section III(h); provided, however, that, for purposes of Section III(e), Section III(f) and Section III(g)(2) of PTE 86–128, the ECO Function is the ''authorizing fiduciary'' referred to therein; and the ECO has the authority to terminate the use of the MPS as broker-dealer without penalty to Client Plans at any time; and provided further that the first sentence of Section III(h) of PTE 86–128 is amended for purposes of this Section III.O.2. to provide as follows: ''A trustee (other than a nondiscretionary trustee) may only engage in a covered transaction with a plan that has total net assets with a value of at least $50 million and in the case of a Pooled Fund, the $50 million requirement will be met if fifty percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by investors having total net assets with a value of at least $50 million.''

3. With respect to agency cross transactions described in Section III(g) of PTE 86–128 that are being effected or executed by an MPS broker, (i) neither the MPS broker effecting or executing the agency cross transaction nor any member of the same MPS Group as the MPS broker effecting or executing the agency cross transaction may have discretionary authority to act on behalf of, and/or provide investment advice to another party to the agency cross transaction which is a seller when the Client Plan is a buyer, or which is a buyer, when the Client Plan is a seller (Another Party), and (ii), neither the BlackRock Manager nor the trader for the BlackRock Manager instituting the transaction for the Client Plan may have knowledge that a BlackRock Entity has discretionary authority and/or provides investment advice to Another Party to the agency cross transaction.

4. The exceptions in Sections IV(a), (b), and (c) of PTE 86–128 are applicable to this exemption.

P. *Use by BlackRock Managers of Exchanges and Automated Trading Systems on Behalf of Client Plans.* Relief under Section I of this exemption is available for the direct or indirect use by, or directing of trades to, U.S. and non-U.S. exchanges or U.S. Automated Trading Systems (ATS) in which one or more MPSs have an ownership interest by BlackRock Managers for Client Plans, if either:

1. No one MPS (together with other members of the same MPS Group) has (i) a greater than ten percent (10%) ownership interest in the exchange or ATS or (ii) the BlackRock Managers do not know the level of such ownership interest; or

2. If a BlackRock Manager knows that an MPS (together with other members of the same MPS Group) has an ownership interest that is greater than ten percent (10%) but not greater than twenty percent (20%) in the exchange or ATS,

(a) The ECO makes a determination, summarized in the ECO quarterly report, that there is no reason for a BlackRock Manager or all BlackRock Managers to discontinue such direct or indirect use of or the directing of trades to any such exchange or ATS on the basis that the amount of use or the volume of trades is unwarranted or not in the interests of the Client Plans and their participants and beneficiaries, and does not make a determination that a BlackRock Manager or all BlackRock Managers must discontinue such direct or indirect use of or the directing of trades to any such exchange or ATS on the basis that the amount of use or the volume of trades is unwarranted or not in the interests of the Client Plans and their participants and beneficiaries. The IM may request any additional information relating to any such determination summarized in the ECO quarterly report and may, after consultation with the ECO, make a determination that a BlackRock Manager or all BlackRock Managers must discontinue such direct or indirect use of or the directing of trades to any such exchange or ATS on the basis that the amount of use or the volume of trades is unwarranted or not in the interests of the Client Plans and their participants and beneficiaries;

(b) The price and compensation associated with any purchases or sales utilizing such exchange or ATS are not greater than the price and compensation associated with an arm's length transaction with an unrelated party; and

(c) All such exchanges and ATSs shall be situated within the jurisdiction of the U.S. District Courts and regulated by a U.S. Federal regulatory body or a U.S. federally approved self-regulatory body, provided that this condition shall not apply to the direct or indirect use of or the directing of trades to an exchange in a country other than the United States which is regulated by a government regulator or a government approved self-regulatory body in such country and which involves trading in Securities (including the lending of Securities) or futures contracts.

Q. *Purchases in the Secondary Market of Common and Preferred Stock Issued by an MPS by BlackRock Managers for Client Plans Invested in an Index*

[35] 51 FR 41686 (Nov. 18, 1986), as amended, 67 FR 64137 (Oct. 17, 2002).

Account or Fund, or a Model-Driven Account or Fund. Relief under Section I of this exemption is available for the purchase in the secondary market of common or preferred stock issued by an MPS by BlackRock Managers for Client Plans invested in an Index Account or Fund, or a Model-Driven Account or Fund provided that:

1. Such purchase is for the sole purpose of maintaining quantitative conformity with the weight of such Securities prescribed by the relevant Index, for Index Accounts or Funds, or the weight of such Securities prescribed by the relevant Model, for Model-Driven Accounts or Funds, and such purchase is reasonably calculated not to exceed the purchase amount necessary for such Model or quantitative conformity by more than a *de minimis* amount.

2. Such purchase is not made from the issuing MPS.

3. Notwithstanding Section III.Q.2., BlackRock Managers may rely on other exemptive relief when acquiring stock of an MPS for Client Plans through an MPS broker, including the issuing MPS.

R. *Purchase in the Secondary Market of Common and Preferred Stock Issued by an MPS by BlackRock Managers for Client Plans Invested in an Other Account or Fund.* Relief under Section I of this exemption is available for the purchase in the secondary market of common or preferred stock issued by an MPS by BlackRock Managers for Client Plans invested in an Other Account or Fund provided that:

1. Such purchase is not made from the issuing MPS.

2. Notwithstanding Section III.R.1., BlackRock Managers may rely on other exemptive relief when acquiring stock of an MPS for Client Plans under this Section III.R. through an MPS broker, including the issuing MPS.

3. As a consequence of a purchase of MPS stock, the class of stock purchased does not constitute more than five percent (5%) of the Other Account or Fund. In the case of a Pooled Fund, the class of stock purchased and attributed to each Client Plan does not exceed five percent (5%) of such Client Plan's proportionate interest in the Pooled Fund.

4. Aggregate daily purchases of a class of MPS stock for Client Plans do not exceed the greater of (i) fifteen percent (15%) of the aggregate average daily trading volume (ADTV) for the previous ten (10) trading days, or (ii) fifteen percent (15%) of trading volume on the date of the purchase. These volume limitations must be met on a portfolio manager by portfolio manager basis unless purchases are coordinated among portfolio managers, in which case the limitations are applied to the coordinated purchase.[36] Any coordinated purchases of the same class of MPS stock in the secondary market for Index Accounts or Funds or for Model-Driven Accounts or Funds must be taken into account when applying these ADTV limitations on purchases for an Other Account or Fund; provided, however, if coordinated purchases for Index Accounts or Funds, or for Model-Driven Accounts or Funds, would cause the fifteen percent (15%) limitation to be exceeded, BlackRock Managers can nonetheless acquire for Other Accounts or Funds up to the greater of five percent (5%) of ADTV for the previous ten (10) trading days or five percent (5%) of trading volume on the day of the Covered Transaction. For purposes of this Section III.R.4., cross trades of MPS equity Securities which comply with an applicable statutory or administrative prohibited transaction exemption are not taken into account.

5. The ECO Function monitors the volume limits on purchases of MPS stock described in Section III.R.4. and provides a monthly report to the IM with respect to such purchases and limits. The IM shall impose lower volume limitations and take other appropriate action with respect to such purchases if the IM determines on the basis of these reports by the ECO and publicly available information materially related to the trading of the Securities of an MPS on its primary listing exchange (or market) that the purchases described have a material positive impact on the market price for such Securities.

S. *Purchases, Sales and Holdings by BlackRock Managers for Client Plans of Commercial Paper Issued by ABCP Conduits, When an MPS Has One or More Roles.* Relief under Section I of this exemption is available for the purchase and sale, including purchases from or sales to an MPS, and the holding by BlackRock Managers acting on behalf of Client Plans of commercial paper issued by an ABCP Conduit with respect to which an MPS acts as seller, placement agent, and/or in some continuing capacity such as program administrator, provider of liquidity or provider of credit support, provided that:

1. (a) The Client Plan is not an MPS Plan of the MPS with whom the purchase or sale takes place, or an MPS Plan of another MPS member of the same MPS Group as such MPS; and (b) the Client Plan is not an MPS Plan of an MPS which is acting in a continuing capacity, or an MPS Plan of another MPS member of the same MPS Group as such MPS; provided that, the conditions set forth in clauses (a) and (b) of this Section III.S.1. will be deemed met if a Client Plan meets the condition of Section II.A.2. by reason of Section II.A.3. of this exemption;

2. Neither the MPS involved in the Covered Transaction nor any member of the same MPS Group as the MPS involved in such Covered Transaction has discretionary authority or control with respect to Client Plan assets involved in the Covered Transaction under this Section III.S.; provided that, this condition will be deemed met if a Client Plan meets the condition of Section II.A.2. by reason of Section II.A.3. of this exemption;

3. The commercial paper has a stated maturity date of nine months or less from the date of issue, exclusive of days of grace, or is a renewal of an issue of commercial paper the maturity of which is likewise limited;

4. At the time it is acquired, the commercial paper is ranked in the highest rating category by at least one of the Rating Organizations;

5. If the seller or purchaser of the ABCP commercial paper is an MPS, purchases and sales are made pursuant to the Three Quote Process, provided that, for purposes of this Section III.S.5., firm quotes on comparable short-term money market instruments rated in the same category may be used for purposes of the Three Quote Process; and

6. If an MPS performs a continuing role and there is a default, the taking or refraining from taking of any action by the responsible BlackRock Manager which could have a material positive or negative effect upon the MPS is decided upon by the IM.

No BlackRock Entity is to be regarded as an affiliate of any MPS for purposes of the Covered Transactions set forth in this Section III.S.

T. *Purchase, Holding and Disposition by BlackRock Managers for Client Plans of Shares of Exchange-Traded Open-End Investment Companies Registered Under the 1940 Act (ETF) Managed by BlackRock Managers.* Relief under Section I of this exemption is available for the purchase, holding and disposition by BlackRock Managers for Client Plans of shares of an ETF managed by a BlackRock Manager provided that:

[36] For example, if two or more portfolio managers send their purchase orders to the same trading desk and the traders on that trading desk coordinate the purchases of the same MPS equity Securities, the limitations apply to the trading desk; if two or more portfolio managers or two or more trading desks are coordinating purchases of MPS equity Securities, the limitations are applied across the group of portfolio managers or traders who are coordinating the purchase orders.

1. The BlackRock Manager purchases such ETF shares from or through a person other than an MPS or a BlackRock Entity; and

2. No purchase is exempt under Section I of this exemption if the BlackRock Manager portfolio manager acting for the Client Plan knows or should know that the shares to be acquired for Client Plans are Creation Shares, or that the purchase for Client Plans will result in new Creation Shares.

U. *Purchase, Holding and/or Disposition of BlackRock Equity Securities in the Secondary Market by BlackRock Managers for an Index Account or Fund, or a Model-Driven Account or Fund, Including Buy-Ups.*[37] Relief under Section I of this exemption is available for the purchase, holding and disposition of common or preferred stock issued by BlackRock in the secondary market by BlackRock Managers for Client Plans in an Index Account or Fund, or in a Model-Driven Account or Fund provided that:

1. The acquisition, holding and disposition of the BlackRock Securities is for the sole purpose of maintaining quantitative conformity with the weight of such Securities prescribed by the relevant Index, for Index Accounts or Funds, or the weight of such Securities prescribed by the relevant Model, for Model-Driven Accounts or Funds, and such purchase is reasonably calculated not to exceed the purchase amount necessary for such Model or quantitative conformity by more than a *de minimis* amount.

2. Any acquisition of BlackRock Securities does not involve any agreement, arrangement or understanding regarding the design or operation of the account or fund acquiring the BlackRock Securities which is intended to benefit BlackRock or any party in which BlackRock may have an interest.

3. With respect to an acquisition of BlackRock Securities by such an account or fund which constitutes a Buy-Up.

(a) The acquisition is made on a single trading day from or through one broker-dealer, which broker-dealer is not an MPS or a BlackRock Entity; provided, however, that if the volume limitation in Section III.U.3.(d) below cannot be satisfied in a single trading day, the acquisition will be completed in as few trading days as possible in compliance with such volume limitation and such trades will be reviewed by the ECO and reported to the IM;

(b) Based upon the best available information, the acquisition is not the opening transaction of a trading day and is not made in the last half hour before the close of the trading day;

(c) The price paid by the BlackRock Manager is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from broker-dealers who are not MPSs or BlackRock Entities;

(d) Aggregate daily purchases do not exceed fifteen percent (15%) of aggregate average daily trading volume for the Security, as determined by the greater of (i) the trading volume for the Security occurring on the applicable Recognized Securities Exchange and/or Automated Trading System on the date of the transactions, or (ii) the aggregate average daily trading volume for the Security occurring on the applicable Recognized Securities Exchange and/or Automated Trading System for the previous ten (10) trading days, both based on the best information reasonably available at the time of the transaction. These volume limitations are applied on a portfolio manager by portfolio manager basis unless purchases of BlackRock Securities are coordinated by the portfolio managers or trading desks, in which case the limitations are aggregated for the coordinating portfolio managers or trading desks. Provided further, if BlackRock, without Client Plan direction or consent, initiates a new Index Account or Fund or Model-Driven Account or Fund on its own accord, with BlackRock Securities included therein, the volume restrictions for such new account or fund shall be determined by aggregating all portfolio managers purchasing for such new account of fund. Cross trades of BlackRock Securities which comply with an applicable statutory or administrative prohibited transaction exemption are not included in the amount of aggregate daily purchases to which the limitations of this Section III.U. apply;

(e) All purchases and sales of BlackRock Securities occur either (i) on a Recognized Securities Exchange, (ii) through an Automated Trading System operated by a broker-dealer that is not a BlackRock Entity and is either registered under the 1934 Act, and thereby subject to regulation by the Securities and Exchange Commission, or subject to regulation and supervision by the Securities and Futures Authority of the UK or another applicable regulatory authority, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an Automated Trading System that is operated by a Recognized Securities Exchange, pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(f) The ECO designs acquisition procedures for BlackRock Managers to follow in Buy-Ups, which the IM approves in advance of the commencement of any Buy-Up, and the ECO Function monitors BlackRock Manager's compliance with such procedures.

V. *Acquisition by BlackRock Managers of Financial Guarantees, Indemnities and Similar Protections for Client Plans from MPSs.* Relief under Section I of this exemption is available for the provision by an MPS of a financial guarantee, indemnification arrangement or similar instrument or arrangement providing protection to a Client Plan against possible losses or risks provided that:

1. The terms of the arrangement (including the identity of the provider) are approved by a fiduciary of the Client Plan which is independent of the MPS providing such protection and of BlackRock;

2. The compensation owed the MPS under the arrangement is paid by a BlackRock Entity and not paid out of the assets of the Client Plan;

3. In the event a Client Plan or the ECO concludes an event has occurred which should trigger the obligations of the MPS under the arrangement, and the MPS disagrees to any material extent, the IM determines the steps the BlackRock Manager must take to protect the interests of the Client Plan; and

4. The MPS providing the arrangement is capable of being sued in United States courts, has contractually agreed to be subject to litigation in the United States with respect to any matter relating to this Section III.V., and has sufficient assets in the United States to honor its commitments under the arrangement.

W. *Purchase of a Portion or All of a Loan to an Entity Which is not an MPS and is not a BlackRock Entity from an MPS or Other Arranger and the Holding thereof by BlackRock Managers Where an MPS is an Arranger, and/or an MPS has an Ongoing Function Regarding Such Loan.* Relief under Section I of this exemption is available for the purchase from an MPS or other Arranger by BlackRock Managers on behalf of Client Plans of all or a portion of a Loan and the holding thereof, where an MPS is an

[37] BlackRock requested such relief for the avoidance of any issue about the necessity for such relief in particular circumstances; the Department is not opining on the need for such relief herein.

Arranger and/or an MPS has an ongoing function in relation to the Loan, provided that:

1. The BlackRock Manager obtains an assignment of the Loan or portion thereof on behalf of the Client Plan, which assignment provides for the Client Plan to become the lender of record, and the transfer of title, voting rights and all other applicable rights to such Client Plan (the Loan or the portion thereof, an ''Assigned Loan'');

2. The borrower under the Assigned Loan is not an MPS or a BlackRock Entity; [38]

3. The Assigned Loan is purchased prior to the end of the first day on which any sales are made pursuant to that offering, at a price that is not more than the price paid by each other purchaser of Assigned Loans in that offering or in any concurrent offering of the Assigned Loans, except that Assigned Loans may be purchased at a price that is not more than the price paid by each other purchaser of the Assigned Loans in that offering or in any concurrent offering of the Assigned Loans and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable Assigned Loans offered subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the Assigned Loans being purchased;

4. The Assigned Loan is offered pursuant to a selling agreement or arrangement under which the Arrangers are committed to make the full amount of the loan commitment to the borrower;

5. The borrower under the Assigned Loan to be purchased pursuant to this exemption must have been in continuous operation for not less than three (3) years, including the operation of any predecessors, unless:

(a) The Assigned Loan has a Facility Rating in one of the four highest rating categories by a Rating Organization; provided that none of the Rating Organizations provides a Facility Rating in a category lower than the fourth highest rating category with respect to the Assigned Loan; provided further that if the Assigned Loan lacks a Facility Rating, the Assigned Loan shall have a Borrower Rating that meets the ratings standards set forth in this subsection; or

(b) The Assigned Loan is fully guaranteed by a guarantor that has been in continuous operation for not less than three (3) years, including the operation of any predecessors, provided that such guarantor has issued Securities registered under the 1933 Act; or if such guarantor has issued Securities which are exempt from such registration requirement, such guarantor has been in continuous operation for not less than three (3) years, including the operation of any predecessors, and such guarantor is:

(i) A bank,

(ii) An issuer of Securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(iii) An issuer of Securities that are the subject of a distribution and are of a class which is required to be registered under Section 12 of the 1934 Act, and are issued by an issuer that has been subject to the reporting requirements of Section 13 of the 1934 Act for a period of at least ninety (90) days immediately preceding the sale of such Loans and that has filed all reports required to be filed hereunder with the SEC during the preceding twelve (12) months.

6. The aggregate amount of an Assigned Loan being purchased in a Loan Offering pursuant to this exemption by the BlackRock Manager with: (i) The assets of all Client Plans; and (ii) the assets, calculated on a pro rata basis, of all Client Plans investing in Pooled Funds managed by the BlackRock Manager; and (iii) the assets of plans to which the BlackRock Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c) does not exceed:

(a) Thirty five percent (35%) of the total amount of the Assigned Loan being purchased in the Loan Offering, if the Facility Rating of such Assigned Loan is, or, if such Assigned Loan does not have a Facility Rating, the borrower thereunder has a Borrower Rating, in one of the four highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations provides a Facility Rating for such Assigned Loan or, if such Assigned Loan does not have a Facility Rating, a Borrower Rating, in a category lower than the fourth highest rating category; or

(b) Twenty five percent (25%) of the total amount of the Assigned Loan being purchased in the Loan Offering, if the Facility Rating of such Assigned Loan is, or, if such Assigned Loan does not have a Facility Rating, the borrower thereunder has a Borrower Rating, in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations provides a Facility Rating for such Assigned Loan or, if such Assigned Loan does not have a Facility Rating, a Borrower Rating, in a category lower than the sixth highest rating category; and provided that

(c) The assets of any single Client Plan (and the assets of any Client Plans investing in Pooled Funds) may not be used to purchase any Assigned Loan if the Facility Rating of such Assigned Loan is, or, if such Assigned Loan does not have a Facility Rating, the borrower thereunder has a Borrower Rating that is lower than the sixth highest rating category by any of the Rating Organizations.

7. Notwithstanding the percentage of a Loan Offering permitted to be acquired, as set forth in Subsections 6(a) or (b) of this Section III.W., the amount of Assigned Loans in a Loan Offering purchased pursuant to this exemption by the BlackRock Manager on behalf of any single Client Plan, either individually or through investment, calculated on a pro rata basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Assigned Loans being offered in such Loan Offering, provided that a Sub-Advised Pooled Fund as a whole may purchase up to three percent (3%) of a Loan Offering.

8. The aggregate amount to be paid by any single Client Plan in purchasing any Assigned Loans which are the subject of this exemption, including any amounts paid by any Client Plan in purchasing such Assigned Loans through a Pooled Fund, calculated on a pro rata basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan, as of the last day of the most recent fiscal quarter of such Client Plan prior to such transaction, provided that a Sub-Advised Pooled Fund as a whole may pay up to one percent (1%) of fair market value of its net assets in purchasing such Assigned Loans.

9. The BlackRock Manager has an opportunity to review the material terms of the Assigned Loan prior to agreeing to acquire the Assigned Loan, as well as review information which information may be obtained from one or more web-based sites (*e.g.,* Intralinks) maintained for potential investors and lenders for this purpose. Information available to be reviewed shall include information regarding the borrower and draft loan documents (*e.g.,* credit agreement, confidential information statement).

10. The Covered Transactions in this Section III.W. are not part of an agreement, arrangement, or understanding designed to benefit any BlackRock Entity or MPS.

[38] Proceeds of the Assigned Loan may be used by the relevant borrower to repay a debt owed to an MPS, provided that the conditions set forth in Section III.J. of this exemption are satisfied (for these purposes and for purposes of such conditions the Assigned Loan shall be deemed to be a Security).

11. Each Client Plan engaging in Covered Transactions pursuant to this Section III.W. shall have total net assets of at least $100 million in Securities of issuers that are not affiliated with such Client Plan (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in the purchase of an Assigned Loan which is the subject of this exemption, each Client Plan in such Pooled Fund other than a Sub-Advised Pooled Fund shall have total net assets of at least $100 million in Securities of issuers that are not affiliated with such Client Plan. Notwithstanding the foregoing, if each Client Plan in such Pooled Fund other than a Sub-Advised Pooled Fund does not have total net assets of at least $100 million in Securities of issuers that are not affiliated with such Client Plan, the $100 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by investors, each of which have total net assets of at least $100 million in Securities of issuers that are not affiliated with such investor, and the Pooled Fund itself qualifies as a QIB.

For purposes of the net asset requirements described in this Section III.W., where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in ERISA section 407(d)(7), the $100 Million Net Asset Requirement may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

12. No more than twenty percent (20%) of the assets of a Pooled Fund, at the time of a Covered Transaction, are comprised of assets of In-House Plans for which the BlackRock Manager, or a BlackRock Entity exercises investment discretion.

13. The BlackRock Manager must be a QPAM, and, in addition to satisfying the requirements for a QPAM under section VI(a) of PTE 84–14, the BlackRock Manager must also have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million.

14. The conditions of Subsections IV.A.11. and 12. are satisfied with respect to the Covered Transactions described in this Section III.W.

15. With respect to any Assigned Loan under which an MPS has an ongoing function, such as an administrative agent or collateral agent, the taking of or refraining from taking of any action by the responsible BlackRock Manager which could have a material positive or negative effect upon the MPS is decided upon by the IM.

Section IV: Affiliated Underwritings and Affilliated Servicing

A. Affiliated Underwritings

1. The Securities to be purchased are either:

(a) Part of an issue registered under the 1933 Act, or, if Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(i) Are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States,

(ii) Are issued by a bank,

(iii) Are exempt from such registration requirement pursuant to a Federal statute other than the 1933 Act, or

(iv) Are the subject of a distribution and are of a class which is required to be registered under section 12 of the 1934 Act, and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the SEC during the preceding twelve (12) months; or

(b) Part of an issue that is an Eligible Rule 144A Offering. Where the Eligible Rule 144A Offering of the Securities is of equity Securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum; or

(c) Municipal bonds taxable by the United States, including Build America Bonds created under section 54AA of the Code or successor thereto, under which the United States pays a subsidy to the state or local government issuer, but not including Build America Bonds which provide a tax credit to investors.

2. The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that:

(a) If such Securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(b) If such Securities are debt Securities, they may be purchased at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt Securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

3. The Securities to be purchased are offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the Securities being offered, except if:

(a) Such Securities are purchased by others pursuant to a rights offering; or

(b) Such Securities are offered pursuant to an over-allotment option.

4. The issuer of the Securities to be purchased pursuant to this exemption must have been in continuous operation for not less than three (3) years, including the operation of any predecessors, unless the Securities to be purchased:

(a) Are non-convertible debt Securities rated in one of the four highest rating categories by a Rating Organization; provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(b)(i) Are debt Securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(ii) Are municipal bonds taxable by the United States, including Build America Bonds created under section 54AA of the Code or successor thereto, under which the United States pays a subsidy to the state or local government issuer, but not including Build America Bonds which provide a tax credit to investors; or

(c) Are debt Securities which are fully guaranteed by a guarantor that has been in continuous operation for not less than three (3) years, including the operation of any predecessors, provided that such guarantor has issued other Securities registered under the 1933 Act; or if such guarantor has issued other Securities which are exempt from such registration requirement, such guarantor has been in continuous operation for not less than three (3) years, including the operation of any predecessors, and such guarantor is:

(i) A bank;

(ii) An issuer of Securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(iii) An issuer of Securities that are the subject of a distribution and are of a class which is required to be registered under section 12 of the 1934 Act, and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed hereunder with the SEC during the preceding twelve (12) months.

5. The aggregate amount of Securities of an issue purchased, pursuant to this exemption, by the BlackRock Manager with: (i) The assets of all Client Plans; and (ii) the assets, calculated on a *pro rata* basis, of all Client Plans investing in Pooled Funds managed by the BlackRock Manager; and (iii) the assets of plans to which the BlackRock Manager renders investment advice within the meaning of 29 CFR 2510.3 21(c) does not exceed:

(a) Ten percent (10%) of the total amount of the Securities being offered in an issue, if such Securities are equity Securities;

(b) Thirty five percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are Asset-Backed Securities rated in one of the three highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the third highest rating category;

(c) Thirty five percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are debt Securities rated in one of the four highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(d) Twenty five percent (25%) of the total amount of the Securities being offered in an issue, if such Securities are debt Securities (excluding Asset-Backed Securities) rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the sixth highest rating category; and

(e) The assets of any single Client Plan (and the assets of any Client Plans investing in Pooled Funds) may not be used to purchase any Securities being offered, if such Securities are debt Securities rated lower than the sixth highest rating category by any of the Rating Organizations;

(f) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Subsections A.5.(a)–(d) of this Section IV., the amount of Securities in any issue (whether equity or debt Securities or Asset-Backed Securities) purchased, pursuant to this exemption, by the BlackRock Manager on behalf of any single Client Plan, either individually or through investment, calculated on a *pro rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, provided that a Sub-Advised Pooled Fund as a whole may purchase up to three percent (3%) of an issue; and

(g) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages, described, above, in Section IV.A.5.(a)–(d) and (f), is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to QIBs; plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

6. The aggregate amount to be paid by any single Client Plan in purchasing any Securities which are the subject of this exemption, including any amounts paid by any Client Plan in purchasing such Securities through a Pooled Fund, calculated on a *pro rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan, as of the last day of the most recent fiscal quarter of such Client Plan prior to such transaction, provided that a Sub-Advised Pooled Fund as a whole may pay up to one percent (1%) of fair market value of its net assets in purchasing such Securities.

7. The Covered Transactions are not part of an agreement, arrangement, or understanding designed to benefit any BlackRock Entity or MPS.

8. Each Client Plan shall have total net assets with a value of at least $50 million (the $50 Million Net Asset Requirement). For purposes of engaging in Covered Transactions involving an Eligible Rule 144A Offering, each Client Plan shall have total net assets of at least $100 million in Securities of issuers that are not affiliated with such Client Plan (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in an Affiliated Underwriting, each Client Plan in such Pooled Fund other than a Sub-Advised Pooled Fund shall have total net assets with a value of at least $50 million. Notwithstanding the foregoing, if each such Client Plan in a Pooled Fund other than a Sub-Advised Pooled Fund does not have total net assets with a value of at least $50 million, the $50 Million Net Asset Requirement will be met, if fifty percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by investors, each of which has total net assets with a value of at least $50 million.

For purposes of a Pooled Fund engaging in an Affiliated Underwriting involving an Eligible Rule 144A Offering, each Client Plan in such Pooled Fund other than a Sub-Advised Pooled Fund shall have total net assets of at least $100 million in Securities of issuers that are not affiliated with such Client Plan. Notwithstanding the foregoing, if each such Client Plan in such Pooled Fund other than a Sub-Advised Pooled Fund does not have total net assets of at least $100 million in Securities of issuers that are not affiliated with such Client Plan, the $100 Million Net Asset Requirement will be met if fifty percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by investors, each of which have total net assets of at least $100 million in Securities of issuers that are not affiliated with such investor, and the Pooled Fund itself qualifies as a QIB.

For purposes of the net asset requirements described above in Section IV.A.8., where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in ERISA section 407(d)(7), the $50 Million Net Asset Requirement (or in the case of an Eligible Rule 144A Offering, the $100 Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

9. No more than twenty percent (20%) of the assets of a Pooled Fund, at the time of a Covered Transaction, are comprised of assets of In-House Plans for which the BlackRock Manager, or a BlackRock Entity exercises investment discretion.

10. The BlackRock Manager must be a QPAM, and, in addition to satisfying the requirements for a QPAM under section VI(a) of PTE 84–14, the BlackRock Manager must also have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million.

11. The BlackRock Manager maintains, or causes to be maintained,

for a period of six (6) years from the date of any Covered Transaction such records as are necessary to enable the persons described below in Section IV.A.12.(a) to determine whether the conditions of this exemption have been met, except that:

(a) No party in interest with respect to a plan which engages in the Covered Transactions, other than the BlackRock Manager, shall be subject to a civil penalty under ERISA section 502(i) or the taxes imposed by Code sections 4975(a) and (b), if such records are not maintained, or not available for examination as required below by Section IV.A.12.(a); and

(b) A separate prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the BlackRock Manager, such records are lost or destroyed prior to the end of the six-year period.

12. (a) Except as provided below, in Section IV.A.12.(b), and notwithstanding the provisions of subsections (a)(2) and (b) of ERISA section 504, the records referred to above, in Section IV.A.11. are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC;

(ii) Any fiduciary of any Client Plan that engages in the Covered Transactions, or any duly authorized employee or representative of such fiduciary;

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Client Plan that engages in the Covered Transactions, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a Client Plan that engages in the Covered Transactions, or duly authorized employee or representative of such participant or beneficiary;

(b) None of the persons described in Section IV.A.12.(a)(ii) through (iv) shall be authorized to examine trade secrets of the BlackRock Manager, or commercial or financial information which is privileged or confidential; and

(c) Should the BlackRock Manager refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section IV.A.12.(b), the BlackRock Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

B. Affiliated Servicing

1. The Securities are CMBS that are rated in one of the three highest rating categories by a Rating Organization; provided that none of the Rating Organizations rates such Securities in a category lower than the third highest rating category.

2. The purchase of the CMBS meets the conditions of an applicable Underwriter Exemption.

3. (a) The aggregate amount of CMBS of an issue purchased, pursuant to this exemption, by the BlackRock Manager with:

(i) The assets of all Client Plans; and

(ii) The assets, calculated on a pro rata basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the BlackRock Manager; and

(iii) The assets of plans to which the BlackRock Manager renders investment advice, within the meaning of 29 CFR 2510.3–21(c), does not exceed thirty five percent (35%) of the total amount of the CMBS being offered in an issue.

(b) Notwithstanding the percentage of CMBS of an issue permitted to be acquired, as set forth in Section IV.B.3.(a) of this exemption, the amount of CMBS in any issue purchased, pursuant to this exemption, by the BlackRock Manager on behalf of any single Client Plan, either individually or through investment, calculated on a pro rata basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such CMBS being offered in such issue, and;

(c) If purchased in an Eligible Rule 144A Offering, the total amount of the CMBS being offered for purposes of determining the percentages described in Section IV.B.3.(a), is the total of:

(i) The principal amount of the offering of such class of CMBS sold by underwriters or members of the selling syndicate to QIBs; plus

(ii) The principal amount of the offering of such class of CMBS in any concurrent public offering.

4. The aggregate amount to be paid by any single Client Plan in purchasing any CMBS which are the subject of this exemption, including any amounts paid by any Client Plan in purchasing such CMBS through a Pooled Fund, calculated on a pro rata basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan, as of the last day of the most recent fiscal quarter of such Client Plan prior to such transaction.

5. The Covered Transactions under this Section IV.B. are not part of an agreement, arrangement, or understanding designed to benefit any MPS.

6. The requirements of Sections IV.A.8. through 12. are met.

Section V: Correction Procedures

A. 1. The ECO shall monitor Covered Transactions and shall determine whether a particular Covered Transaction constitutes a Violation. The ECO shall notify the IM within five (5) business days following the discovery of any Violation.

2. The ECO shall make an initial determination as to how to correct a Violation and place the conclusion of such determination in writing, with such conclusion disclosed to the IM within five (5) business days of the placing of the conclusion of such determination in writing. Following the initial determination, the ECO must keep the IM apprised on a current basis of the process of correction and must consult with the IM regarding each Violation and the appropriate form of correction. The ECO shall report the correction of the Violation to the IM within five (5) business days following completion of the correction. For purposes of this Section V.A.2., ''correction'' must be consistent with ERISA section 502(i) and Code section 4975(f)(5).

3. The IM shall determinate whether it agrees that the correction of a Violation by the ECO is adequate and shall place the conclusion of such determination in writing, and, if the IM does not agree with the adequacy of the correction, the IM shall have the authority to require additional corrective actions by BlackRock.

4. A summary of Violations and corrections of Violations will be in the IM's annual compliance report as described in Section II.E.12.

B. Special Correction Procedure

1. If a Covered Transaction which would otherwise constitute a Violation is corrected under this ''Special Correction Procedure,'' such Covered Transaction shall continue to be exempt under Section I of this exemption.

2. (a) The Special Correction Procedure is a complete correction of the Violation no later than fourteen (14) business days following the date on which the ECO submits the quarterly report to the IM for the quarter in which the Covered Transaction first would become a non-exempt prohibited transaction by reason of constituting a Violation if not for this Section V.B.

(b) Solely for purposes of the Special Correction Procedure, ''correction'' of a Covered Transaction which would otherwise be a Violation means either:

(i) Restoring the Client Plan to the position it would have been in had the

conditions of the exemption been complied with;

(ii) Correction consistent with ERISA section 502(i) and Code section 4975(f)(5); or

(iii) Correction consistent with the Voluntary Fiduciary Correction Program.[39]

(c) Other than with respect to the definition of ''correction'' specified above, when utilizing the Special Correction Procedure the ECO and the IM shall comply with Section V.A.

Section VI: Definitions[40]

A. ''1933 Act'' means the Securities Act of 1933, as amended.

B. ''1934 Act'' or ''Exchange Act'' means the Securities Exchange Act of 1934, as amended.

C. ''1940 Act'' means the Investment Company Act of 1940, as amended.

D. ''$50 Million Net Asset Requirement'' shall have the meaning set forth in Section IV.A.8. of this exemption.

E. ''$100 Million Net Asset Requirement'' shall have the meaning set forth in Section IV.A.8. of this exemption.

F. ''ABCP Conduit'' means a special purpose vehicle that acquires assets from one or more originators and issues commercial paper to provide funding to the originator(s). Such vehicles are typically administered by a bank, but is not required to be administered by a bank, which provides liquidity support (standing ready to purchase the conduit's commercial paper if it cannot be rolled over) and/or credit support (committing to cover losses in the event of default). The program administrator also typically acts as placement agent for the commercial paper, sometimes together with one or more other placement agents. Commercial paper issued by such a conduit may be purchased directly from the program administrator or other placement agent, or traded on the secondary market with another broker-dealer making a market in the Securities.

G. ''Acquisition'' means the acquisition by BlackRock of Barclays Global Investors UK Holdings, Ltd. and its subsidiaries on December 1, 2009.

H. ''Affiliate'' of another person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative (as defined in section 3(15) of ERISA) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director, partner or employee.

I. ''Arranger'' means a sophisticated financial institution, such as a commercial or investment bank, regularly engaged in structuring commercial loans.

J. ''Asset-Backed Securities'' means Securities which are pass-through certificates or trust certificates characterized as equity pursuant to 29 CFR 2510.3–101 that represent a beneficial ownership interest in the assets of an issuer which is a trust, with any such trust limited to (1) a single or multi-family residential or commercial mortgage investment trust, or (2) a motor vehicle receivable investment trust, and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of the trust, the corpus or assets of which consist solely or primarily of secured obligations that bear interest or are purchased at a discount. For purposes of Section IV.A. of this exemption, excluding Section IV.A.5., Asset-Backed Securities are treated as debt Securities.

K. ''Assigned Loan'' has the meaning set forth in Section III.W.1. of this exemption.

L. ''Authorizing fiduciary'' has the meaning set forth in Section III.M.4(d)(i) of this exemption.

M. ''Automated Trading System'' or ''ATS'' means an electronic trading system, ECN or electronic clearing network or similar venue that functions in a manner intended to simulate a Securities exchange by electronically matching orders from multiple buyers and sellers, such as an ''alternative trading system'' within the meaning of the SEC's Reg. ATS (17 CFR 242.300), as such definition may be amended from time to time, or an ''automated quotation system'' as described in Section 3(a)(51)(A)(ii) of the 1934 Act.

N. ''BlackRock'' means BlackRock, Inc. and any successors thereof.

O. ''BlackRock Entity'' means BlackRock and any entity directly or indirectly, through one or more intermediaries, under the control of BlackRock, and any other entity which subsequently becomes directly or indirectly, through one or more intermediaries, under the control of BlackRock, and successors of the foregoing.

P. ''BlackRock Manager'' means any bank, investment advisor, investment manager directly or indirectly, through one or more intermediaries, under the control of BlackRock, and any other bank, investment advisor, or investment manager which subsequently becomes directly or indirectly, through one or more intermediaries, under the control of BlackRock, and successors of the foregoing, including but not limited to BlackRock Advisors, LLC, BlackRock Financial Management, Inc., BlackRock Capital Management, Inc., BlackRock Institutional Management Corporation, BlackRock International, Ltd., BlackRock Realty Advisors, Inc., BlackRock Investment Management, LLC, BlackRock Fund Advisors, and BlackRock Institutional Trust Company, N.A. and any of the investment advisors and investment manager it controls.

Q. ''Board'' means the Board of Directors of BlackRock.

R. ''Borrower Rating'' means, solely for purposes of Section III.W. of this exemption, a rating assigned by a Rating Organization to a borrowing entity reflecting such borrower's overall capacity and willingness to meet its financial obligations. More specifically, a Borrower's Rating generally refers to the borrower's ability and willingness to meet senior, unsecured obligations.

S. ''Buy-Up'' means an initial acquisition of Securities issued by BlackRock by a BlackRock Manager, if such acquisition exceeds one percent (1%) of the aggregate daily trading volume for such Security, for an Index Account or Fund, or a Model-Driven Account or Fund which is necessary to bring the fund's or account's holdings of such Securities either to its capitalization-weighted or other specified composition in the relevant Index, as determined by the organization maintaining such Index, or to its correct weighting as determined by the Model.

T. ''Client Plan'' means any plan subject to ERISA section 406, Code section 4975 or FERSA section 8477(c) for which a BlackRock Manager is a fiduciary as described in ERISA section 3(21), including, but not limited to, any Pooled Fund, MPS Plan, Index Account or Fund, Model-Driven Account or Fund, Other Account or Fund, or In-House Plan, except where specified to the contrary.

U. ''CMBS'' means an Asset-Backed Security with respect to which the assets or corpus of the issuer consist solely or primarily of obligations secured by commercial real property (including obligations secured by leasehold interests on commercial real property).

V. ''Code'' means the Internal Revenue Code of 1986, as amended.

[39] PTE 2002–51, 67 FR 70623 (November 25, 2002), as amended, 71 FR 20135 (April 19, 2006).

[40] The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Section headings are for convenience only.

W. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

X. ''Covered Transaction'' means each transaction set forth in Section III by a BlackRock Manager for a Client Plan with, affecting or involving, directly or indirectly, an MPS and/or a BlackRock Entity.

Y. ''Creation Shares'' means new shares in an ETF created by an exchange of a specified basket of Securities and/or cash to the ETF for such new shares of the ETF.

Z. ''ECO Function'' means the ECO and such other BlackRock Entity employees in legal and compliance roles working under the supervision of the ECO in connection with the Covered Transactions. The list of BlackRock Entity employees shall be shared with the IM from time to time, not less than quarterly, and such employees will be made available to discuss the relevant Covered Transactions with the IM to the extent the IM or the ECO deem it reasonably prudent.

AA. ''Electronic Communications Network'' or ''ECN'' means an electronic system described in Rule 600(b)(23) of Regulation NMS under the 1934 Act.

BB. ''Eligible Rule 144A Offering'' shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) under the 1940 Act.

CC. ''Eligible Securities Depository'' means an eligible securities depository as that term is defined under Rule 17f–7 of the 1940 Act, as such definition may be amended from time to time.

DD. ''EPP Correction'' has the meaning set forth in Section II.C. of this exemption.

EE. ''ERISA'' means the Employee Retirement Income Security Act of 1974, as amended.

FF. ''ETF'' means an exchange-traded open-end investment company registered under the 1940 Act.

GG. ''Exemption Compliance Officer'' or ''ECO'' means an officer of BlackRock or of a BlackRock Entity appointed by BlackRock or such BlackRock Entity, subject to the approval of the IM, who is responsible for compliance with the exemption. The ECO, unless otherwise stated in this exemption, will be responsible for: Monitoring all Covered Transactions and reviewing compliance with all of the conditions of the exemption applicable thereto; approving certain Covered Transactions in advance as required by the terms of the exemption; reviewing reports of Covered Transactions and the results of sampling of Covered Transactions; and determining when Covered Transactions transgress the EPPs and/or constitute a Violation.

HH. ''Exemption Polices and Procedures'' or ''EPPs'' means the written policy adopted and implemented by BlackRock for BlackRock Entities that is reasonably designed to ensure compliance with the terms of the exemption. The EPPs must reflect the specific requirements of the exemption, but must also be designed to ensure that the decisions to enter into Covered Transactions on behalf of Client Plans with the MPSs are in the interests of Client Plans and their participants and beneficiaries, including by ensuring to the extent possible that the terms of each Covered Transaction are at least as favorable to the Client Plan as the terms generally available in comparable arm's length transactions with unrelated parties.

II. ''Facility Rating'' means, solely for purposes of Section III.W. of this exemption, a rating assigned by a Rating Organization to a specific loan, note or other financial obligation, a specific class of financial obligations, or a specific financial program within a borrower's capital structure. The rating on a specific loan facility or other issue may reflect positive or negative adjustments relative to the borrower's rating for (1) The presence of collateral, (2) explicit subordination, or (3) any other factors that affect the payment priority, expected recovery, or credit stability of the specific issue.

JJ. ''FarmerMac'' means the Federal Agricultural Mortgage Corporation.

KK. ''FERSA'' means the Federal Employees' Retirement System Act of 1986, as amended.

LL. ''FHLMC'' means the Federal Home Loan Mortgage Corporation.

MM. ''Fixed Income Obligations'' means: (1) Fixed income obligations including structured debt or other instruments characterized as debt pursuant to 29 CFR 2510.3–101, including, but not limited to, debt convertible into equity, certificates of deposit and loans (other than loans described in Section III.W. with respect to which an MPS is an Arranger) and (2) guaranteed governmental mortgage pool certificates within the meaning of 29 CFR 2510.3–101(i). Asset-Backed Securities are not Fixed Income Obligations for purposes of this exemption.

NN. ''FNMA'' means the Federal National Mortgage Association.

OO. ''Foreign Bank'' means an institution that has substantially similar powers to a bank as defined in section 202(a)(2) of the Investment Advisers Act, as amended, has as of the last day of its most recent fiscal year, equity capital which is the equivalent of no less than $200 million, and is subject to:

(1) (a) Registration and regulation, as applicable, under the laws of the United Kingdom, or (b)(i) registration and regulation by a securities commission of a Province of Canada that is a member of the Canadian Securities Administration, and (ii) is subject to the oversight of a Canadian self-regulatory authority; or

(2) Regulation by the relevant governmental banking agency(ies) of a country other than the United States and the regulation and oversight of these banking agencies were applicable to a bank that received: (a) An individual exemption, granted by the Department under section 408(a) of ERISA, involving the loan of Securities by a plan to a bank or (b) a final authorization by the Department to engage in an otherwise prohibited transaction pursuant to PTE 96–62, as amended, involving the loan of Securities by a plan to a bank. On the date this exemption becomes effective, the following countries shall qualify for purposes of this clause (2): United Kingdom, Canada, Germany, Japan, Australia, Switzerland, France, the Netherlands and Sweden.

PP. ''Foreign Broker-Dealer'' means a broker-dealer that has, as of the last day of its most recent fiscal year, equity capital that is the equivalent of no less than $200 million and is:

(1) Registered and regulated under the laws of the United Kingdom;

(2) Registered and regulated by a securities commission of a Province of Canada that is a member of the Canadian Securities Administration, and is subject to the oversight of a Canadian self-regulatory authority; or

(3) Registered and regulated under the relevant Securities laws of a governmental entity of a country other than the United States and such Securities laws and regulation were applicable to a broker-dealer that received: (a) An individual exemption, granted by the Department under section 408(a) of ERISA, involving the loan of Securities by a plan to a broker-dealer or (b) a final authorization by the Department to engage in an otherwise prohibited transaction pursuant to PTE 96–62, as amended, involving the loan of Securities by a plan to a broker-dealer. On the date this exemption becomes effective, the following countries shall qualify for purposes of this clause (2): United Kingdom, Canada, Germany, Japan, Australia, Switzerland, France, the Netherlands and Sweden.

QQ. ''Foreign Collateral'' means:

(1) Securities issued by or guaranteed as to principal and interest by the following Multilateral Development Banks, the obligations of which are backed by the participating countries, including the United States: The International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development and the International Finance Corporation;

(2) Foreign sovereign debt Securities provided that at least one nationally recognized statistical rating organization has rated in one of its two highest categories either the issue, the issuer or guarantor;

(3) The British pound, the Canadian dollar, the Swiss franc, the Japanese yen or the Euro;

(4) Irrevocable letters of credit issued by a Foreign Bank, other than the borrower or an affiliate thereof, which has a counterparty rating of investment grade or better as determined by a nationally recognized statistical rating organization; or

(5) Any type of collateral described in Rule 15c3–3 of the 1934 Act as amended from time to time provided that the lending fiduciary is a U.S. Bank or U.S. Broker-Dealer and such fiduciary indemnifies the plan with respect to the difference, if any, between the replacement cost of the borrowed Securities and the market value of the collateral on the date of a borrower default plus interest and any transaction costs which a plan may incur or suffer directly arising out of a borrower default. Notwithstanding the foregoing, collateral described in any of the categories enumerated in section V(e) of Prohibited Transaction Exemption 2006–16 will be considered U.S. Collateral for purposes of the exemption.

RR. ''Foreign Exchange Transaction'' means the exchange of the currency of one nation for the currency of another nation, or a contract for such an exchange. The term Foreign Exchange Transaction includes option contracts on foreign exchange transactions. Foreign Exchange Transactions may be either ''spot'', ''forward'' or ''split'' depending on the settlement date of the transaction.

SS. ''GNMA'' means the Government National Mortgage Association.

TT. ''Independent Monitor'' or ''IM'' means an individual or entity appointed by BlackRock to carry out certain functions set forth in Sections II, III and V of the exemption and who (or which), given the number of types of Covered Transactions and the number of actual individual Covered Transactions potentially covered by the exemption, must be knowledgeable and experienced with respect to each Covered Transaction and able to demonstrate sophistication in relevant markets, instruments and trading techniques relative thereto, and, in addition, must understand and accept in writing its duties and responsibilities under ERISA and the exemption with respect to the Client Plans. The IM must be independent of and unrelated to BlackRock and any MPS. For purposes of this exemption, such individual or entity will not be deemed to be independent of and unrelated to BlackRock and the MPSs if:

(1) Such individual or entity directly or indirectly controls, is controlled by, or is under common control with BlackRock or an MPS;

(2) Such individual or entity, or any employee thereof performing services in connection with this exemption, or an officer, director, partner, or highly compensated employee (as defined in Code section 4975(e)(2)(H)) thereof, is an officer, director, partner or highly compensated employee (as defined in Code section 4975(e)(2)(H)) of BlackRock or an MPS; or any member of the business segment performing services in connection with this exemption is a relative of an officer, director, partner or highly compensated employee (as defined in Code section 4975(e)(2)(H)) of BlackRock or an MPS.

However, if an individual is a director of the IM and an officer, director, partner or highly compensated employee (as defined in Code section 4975(e)(2)(H)) of BlackRock or an MPS, and if he or she abstains from participation in any of the services performed by the IM under this exemption, then this Section VI.OO.(2) shall not apply.

For purposes of this Subsection, the term officer means a president, any senior vice president in charge of a principal business unit, division or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for the IM, BlackRock, or an MPS.

(3) The IM directly or indirectly receives any compensation or other consideration for the IM's personal account in connection with any Covered Transaction, except that the IM may receive compensation from BlackRock for acting as IM as contemplated herein if the amount or payment of such compensation is reasonable and not contingent upon or in any way affected by any decision made by the IM while acting as IM; or

(4) The annual gross revenue received by the IM, during any year of its engagement, from the MPSs and BlackRock Entities for all services exceeds the greater of (a) five percent (5%) of the IM's annual gross revenue from all sources for its prior tax year, or, (b) one percent (1%) of the annual gross revenue of the IM and its majority shareholder from all sources for their prior tax year.

UU. ''Index'' means an equity or debt Securities or commodities index that represents the investment performance of a specific segment of the market for equity or debt Securities or commodities in the United States and/or an individual foreign country or any collection of foreign countries, but only if—

(1) The organization creating and maintaining the index is:

(a) Engaged in the business of providing financial information, evaluation, advice or Securities brokerage services to institutional clients,

(b) A publisher of financial news or information, or

(c) A public Securities exchange or association of Securities dealers; and

(2) The index is created and maintained by an organization independent of all BlackRock Entities. For purposes of this definition of ''Index,'' every BlackRock Entity is deemed to be independent of every MPS.

(3) The index is a generally accepted standardized index of Securities or commodities which is not specifically tailored for the use of a BlackRock Manager(s).

(4) If the organization creating, providing or maintaining the Index is an MPS:

(a) Such Index must be widely-used in the market by independent institutional investors other than pursuant to an investment management or advisory relationship with a BlackRock Manager, and must be prepared or applied by such MPS in the same manner as for customers other than a BlackRock Manager(s);

(b) BlackRock must certify to the ECO whether, in its reasonable judgment, such Index is widely-used in the market. In making this determination, BlackRock shall take into consideration factors such as (i) publication of summary Index information by the MPS providing the Index, Bloomberg, Reuters, or a similar institution involved in the dissemination of financial information, and (ii) delivery of Index information including but not limited to Index component information by such MPS to clients or other subscribers

including by electronic means including via the internet;

(c) BlackRock must notify the ECO if it becomes aware that: (i) Such Index is operated other than in accordance with objective rules, in the ordinary course of business, (ii) manipulation of any such Index has occurred for the purpose of benefiting BlackRock, or (iii) in the event that any rule change occurred in connection with the rules underlying such Index, such rule change was made by the MPS for the purpose of benefiting BlackRock; provided, however, this Subsection (c)(iii) expressly excludes instances where the rule changes were made in response to requests from clients/prospective clients of BlackRock even if BlackRock is ultimately hired to manage such a portfolio (*e.g.,* if plan sponsor X requests a ''Global ex-Sudan Fixed Income Index'', an MPS decides to sponsor such index and plan sponsor X approaches BlackRock or otherwise issues a ''Request for Proposal'' for investment managers who could manage an index portfolio benchmarked to the Global ex-Sudan Fixed Income Index).

(d) BlackRock must certify to the ECO annually that it is not aware of the occurrence of any of the events described in Section VI.PP.(4)(c), and if BlackRock cannot so certify, or if BlackRock provides the ECO with the notice described Section VI.PP.(4)(c), the ECO shall notify the IM, and the IM must take appropriate remedial action which may include, but need not be limited to, instructions for relevant BlackRock Managers to cease using such Index.

VV. ''Index Account or Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by a BlackRock Manager or a BlackRock Entity, in which one or more Client Plans invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an Index by either (i) replicating the same combination of Securities or commodities which compose such Index or (ii) sampling the Securities or commodities which compose such Index based on objective criteria and data;

(2) For which the BlackRock Manager does not use its discretion, or data within its control, to affect the identity or amount of Securities or commodities to be purchased or sold;

(3) That contains ''plan assets'' subject to either ERISA section 406, Code section 4975 or FERSA section 8477(c); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Index Account or Fund which is intended to benefit a BlackRock Entity or an MPS, or any party in which a BlackRock Entity or an MPS may have an interest.

For purposes of this definition of ''Index Account or Fund'', every BlackRock Entity is deemed to be independent of each MPS.

WW. ''In-House Plan'' means an employee benefit plan that is subject to ERISA section 406 and/or Code section 4975, and that is sponsored by a BlackRock Entity for its employees.

XX. ''Interbank Rate'' means the interbank bid and asked rate for foreign exchange transactions of comparable size and maturity at the time of the transaction as quoted on a nationally recognized service for facilitating foreign currency trades between large commercial banks and Securities dealers.

YY. ''Know'' means to have actual knowledge. BlackRock Managers will be deemed to have actual knowledge of information set forth in a written agreement or offering document as of the date the BlackRock Manager receives such agreement or document.

ZZ. ''Lead Arranger'' means, with respect to any Loan Offering involving more than one Arranger, the Arranger designated as such by all of such Arrangers.

AAA. ''Loan'' means, solely for purposes of Section III.W. of this exemption, a delivery by a lender and receipt by a commercial borrower of a sum of money to fund current and ongoing operations or a specific transaction upon agreement that such borrower is to repay it upon agreed terms. For the avoidance of doubt, this term does not include any Fixed Income Obligations which are covered separately under Section IV.A. of this exemption.

BBB. ''Loan Offering'' means, with respect to the aggregate principal amount of any Loan extended to a commercial borrower in any single transaction, the process of structuring, marketing and offering to banks, insurance companies, investment funds and other institutional investors the opportunity to purchase interests in such Loan.

CCC. ''Model'' means a computer model that is based on prescribed objective criteria using independent data not within the control of a BlackRock Entity to transform an Index.

DDD. ''Model-Driven Account or Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by a BlackRock Manager or a BlackRock Entity in which one or more Client Plans invest, and—

(1) Which is composed of Securities or commodities the identity of which and the amount of which are selected by a Model;

(2) That contains ''plan assets'' subject to either ERISA section 406, Code section 4975 or FERSA section 8477(c); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Model-Driven Account or Fund or the utilization of any specific objective criteria which is intended to benefit a BlackRock Entity or an MPS, or any party in which a BlackRock Entity or an MPS may have an interest.

For purposes of this definition of ''Model-Driven Account or Fund,'' every BlackRock Entity is deemed to be independent of each MPS.

EEE. ''MPS'' or ''Minority Passive Shareholder'' means any of (1) Barclays PLC, (2) The PNC Financial Services Group, Inc., or (3) each entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with one or more of Barclays PLC (Barclays MPSs) or The PNC Financial Services Group, Inc., (PNC MPSs) (each of the PNC MPSs and the Barclays MPSs, an MPS Group) but excluding any and all BlackRock Entities.

FFF. ''MPS Group'' shall have the meaning set forth in the definition of MPS.

GGG. ''MPS Plans'' means an employee benefit plan(s) that is subject to ERISA section 406 and/or Code section 4975, and that is sponsored by an MPS for its employees.

HHH. ''Other Account or Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by a BlackRock Manager or a BlackRock Entity in which one or more Client Plans invest, and—

(1) Which is not an Index Account or Fund or a Model-Driven Account or Fund; and

(2) That contains ''plan assets'' subject to either ERISA section 406, Code section 4975 or FERSA section 8477(c).

III. ''Pooled Fund'' means a common or collective trust fund or other pooled investment fund:

(1) In which Client Plan(s) invest;

(2) For which a BlackRock Manager exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s); and

(3) That contains ''plan assets'' subject to either ERISA section 406, Code section 4975 or FERSA section 8477(c).

Solely for purposes of Section IV of this exemption, ''Pooled Fund(s)'' shall only include funds or trusts which otherwise meet this definition but which also are either (i) maintained by a BlackRock Entity or (ii) maintained by a person which is not a BlackRock Entity but is sub-advised by a BlackRock Manager, provided that with respect to a Pooled Fund described in (ii), (A) the fund or trust is either a bank-maintained common or collective trust fund or an insurance company pooled separate account that holds assets of at least $250 million, (B) the bank or insurance company sponsoring the Pooled Fund has total client assets under its management or control in excess of $5 billion as of the last day of its most recent fiscal year, and shareholders' or partners' equity in excess of $1 million, and (C) the decision to invest the Client Plan into the bank-maintained common or collective trust or insurance company pooled separate account and to maintain such investment is made by a Client Plan fiduciary which is not a BlackRock Entity. Such sub-advised Pooled Funds are sometimes referred to herein as ''Sub-Advised Pooled Funds''.

JJJ. ''Qualified Institutional Buyer'' or ''QIB'' shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

KKK. ''QPAM Exemption'' or ''PTE 84–14'' means Prohibited Transaction Exemption 84–14, as amended.

LLL. ''Qualified Professional Asset Manager'' or ''QPAM'' shall have the meaning set forth in Section VI(a) of the QPAM Exemption.

MMM. ''Rating Organizations'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings Inc., DBRS Limited, DBRS, Inc., or any similar agency subsequently recognized by the Department as a Rating Organization or any successors thereto.

NNN. ''Recognized Securities Exchange'' means a U.S. securities exchange that is registered as a ''national securities exchange'' under section 6 of the 1934 Act, or a designated offshore securities market, as defined in Regulation S of the SEC (17 CFR 230.902(b)), as such definition may be amended from time to time, which performs with respect to Securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable Securities laws (*e.g.,* 17 CFR 240.3b–16).

OOO. ''Registered Investment Advisor'' means an investment advisor registered under the Investment Advisors Act of 1940, as amended, that has total client assets under its management or control in excess of $5 billion as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million, as shown in the most recent balance sheet prepared within the two years immediately preceding a Covered Transaction, in accordance with generally accepted accounting principles.

PPP. ''SEC'' means the United States Securities and Exchange Commission.

QQQ. ''Securities'' shall have the same meaning as defined in section 2(a)(36) of the 1940 Act. For purposes of Section IV of this exemption, except as where specifically identified, Asset-Backed Securities are treated as debt Securities.

RRR. ''Three Quote Process'' means three bids or offers (either of which being sometimes referred to as quotes) are received by a trader for a BlackRock Manager each of which such quotes such trader reasonably believes is an indication that the dealer presenting the bid or offer is willing to transact the trade at the stipulated volume under discussion, and all material terms (including volume) under discussion are materially similar with respect to each other such quote. In selecting the best of three such quotes, a BlackRock Manager shall maintain books and records for the three firm bids/offers in a convention that it reasonably believes is customary for the specific asset class (such as ''price'' quotes, ''yield'' quotes or ''spread'' quotes). For example, corporate bonds are often quoted on a spread basis and dealers customarily quote the spread above a certain benchmark bond's yield (*e.g.,* for a given size and direction such as a BlackRock trader may ask for quotes to sell $1 million of a particular bond, dealer 1 may quote 50 bps above the yield of the 10 year treasury bond, dealer 2 might quote 52 bps above the yield of the 10 year treasury bond and dealer 3 might quote 53 bps above the yield of the 10 year treasury bond). If only two firm bids/offers can be obtained, the trade requires prior approval by the ECO and the ECO must inquire as to why three firm bids/offers could not be obtained. If in the case of a sale or purchase a trader for a BlackRock Manager reasonably believes it would be injurious to the Client Plan to specify the size of the intended trade to certain bidders, a bid on a portion of the intended trade may be treated as a firm bid if the trader documents (i) why the bid price is a realistic indication of the economic terms for the actual amount being traded despite the difference in the size of the actual trade and (ii) why it would be harmful to the Client Plan to solicit multiple bids on the actual amount of the trade. If a trader for a BlackRock Manager solicits bids from three or more dealers on a sale or purchase of a certain volume of Securities, and receives back three or more bids, but at least one bid is not for the full amount of the intended sale, if the price offered by the partial bidder(s) is less than the price offered by the full bidder(s), the trader may assume a full bid by the partial bidder(s) would not be the best bid, and the trader can consummate the trade, in the case of at least two full bids, with the dealer making the better of the full bids, or in the case of only one full bid, with the dealer making that full bid.

SSS. ''Underwriter Exemption(s)'' means a group of individual exemptions granted by the Department to provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition by plans of Asset-Backed Securities representing undivided interests in those trusts. Such group of individual exemptions was collectively amended by Prohibited Transaction Exemption 2009–31, 74 FR 59001 (Nov. 16, 2009).

TTT. ''U.S. Bank'' means a bank as defined in section 202(a)(2) of the Investment Advisers Act, as amended.

UUU. ''U.S. Broker-Dealer'' means a broker-dealer registered under the 1934 Act or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted government Securities (as defined in section 3(a)(12) of the 1934 Act).

VVV. ''U.S. Collateral'' means:

(1) U.S. currency;

(2) ''Government securities'' as defined in section 3(a)(42)(A) and (B) of the 1934 Act;

(3) ''Government securities'' as defined in section 3(a)(42)(C) of the 1934 Act issued or guaranteed as to principal or interest by the following corporations: The Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association and the Financing Corporation;

(4) Mortgage-backed Securities meeting the definition of a ''mortgage related security'' set forth in section 3(a)(41) of the 1934 Act;

(5) Negotiable certificates of deposit and bankers acceptances issued by a ''bank'' as that term is defined in section 3(a)(6) of the 1934 Act, and which are payable in the United States and deemed to have a ''ready market'' as that term is defined in 17 CFR 240.15c3–1; or

(6) Irrevocable letters of credit issued by a U.S. Bank other than the borrower

or an affiliate thereof, or any combination, thereof.

WWW. ''Violation'' means a Covered Transaction which is a prohibited transaction under ERISA sections 406 or 407, Code section 4975, or FERSA section 8477(c) and which is not exempt by reason of a failure to comply with this exemption or another administrative or statutory exemption. To the extent that the non-exempt prohibited transaction relates to an act or omission that is separate and distinct from a prior otherwise exempt transaction that may relate to the same asset (*e.g.,* a conversion of a debt instrument into an equity instrument or a creditor's committee for a debt instrument), the Violation occurs only at the current point in time and no Violation shall be deemed to occur for the earlier transaction relating to the same asset (*e.g.,* the initial purchase of the asset) that was otherwise in compliance with ERISA, the Code or FERSA.

Effective Date: This exemption is effective as of March 31, 2012, except that, with respect to Covered Transactions described in Section III.K. and S., the exemption is effective as of October 1, 2011.

Signed at Washington, DC, this 12th day of January, 2012.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2012–788 Filed 1–18–12; 8:45 am]

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Part III

Department of Energy

10 CFR Part 430

Energy Conservation Program: Test Procedure for Television Sets; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2010–BT–TP–0026]

RIN 1904–AC29

Energy Conservation Program: Test Procedure for Television Sets

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) proposes to establish a new test procedure for television sets (TVs). DOE repealed the prior Federal test procedure for TVs on October 20, 2009, due to petitions from the California Energy Commission (CEC) and the Consumer Electronics Association (CEA). CEC and CEA petitioned for the repeal in light of the June 13, 2009, Federal Communications Commission (FCC) transition from analog to digital broadcast transmissions for TVs. In their petitions, the CEC requested repeal of the regulatory provisions establishing the test procedure and defining ''television set,'' and the CEA petitioned for DOE's adoption of the International Electrochemical Commission's (IEC's) test procedure IEC Standard 62087–2008, ''Methods of measurement for the power consumption of audio, video and related equipment.'' DOE is proposing a new test procedure for TVs that was developed from existing industry test procedures including those by IEC, Environmental Protection Agency (EPA), and CEA. Additionally, DOE will hold a public meeting to receive and discuss comments on the proposal.

DATES: DOE will hold a public meeting on a date that is to be determined, from 9 a.m. to 4 p.m., in Washington, DC. Once a public meeting date is selected, that date can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/tv_sets.html*. The meeting will also be broadcast as a webinar. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than April 3, 2012. See section V, ''Public Participation,'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 to initiate the necessary procedures.

Any comments submitted must identify the Notice of Proposed Rulemaking (NOPR) for the TV Test Procedure, and provide docket number EERE–2010–BT–TP–0026 and/or regulatory information number (RIN) number 1904–AC29. Comments may be submitted using any of the following methods:

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

2. *Email: Televisions-2010-TP-0026@ee.doe.gov*. Include the docket number EERE–2010–BT–TP–0026 and/or RIN 1904–AC29 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V, ''Public Participation,'' of this document.

Docket: The docket is available for review at regulations.gov, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket web page may be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/tv_sets.html*. This Web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Petrolati, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2192. Email: *Victor.Petrolati@ee.doe.gov*.

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov*.

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I. Authority and Background

A. General

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291, *et seq.;* ''EPCA'' or, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (Dec. 19, 2007)). Part B of Title III (42 U.S.C. 6291–6309), which was subsequently redesignated as Part A for editorial reasons, establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' This includes television sets (TVs), the subject of this notice. (42 U.S.C. 6292(a)(12))

Under EPCA, this program consists essentially of three parts: (1) Testing, (2) labeling, and (3) Federal energy conservation standards. The testing requirements consist of test procedures that manufacturers of covered products must use (1) as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) for making representations about the efficiency of those products. Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA.

B. Test Procedure Rulemaking Process

In 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. Specifically, if DOE determines that a test procedure should be prescribed or amended, it must publish the proposed test procedure in the **Federal Register** and give interested parties an opportunity to provide public comment on the procedures. (42 U.S.C. 6293(b)(2)) EPCA also provides that the test procedure shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EISA 2007 amended EPCA to require DOE to implement a standby and off mode energy consumption measurement, if technically feasible, in test procedures where not previously present. Otherwise, DOE must prescribe a separate standby and off mode energy test procedure, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) EISA 2007 also requires any final rule to establish or revise a standard for a covered product, adopted after July 1, 2010, to incorporate standby mode and off mode energy use into a single amended or new standard, if feasible. (42 U.S.C. 6295(gg)(3)(A)) DOE recognizes that the standby and off mode conditions of operation apply to the product covered by this rulemaking. In response to this requirement, DOE proposes adopting provisions in the test procedures to address standby and off mode as discussed in section III.E.5 of this proposed rulemaking.

C. Rulemaking Background

DOE adopted a test procedure for TVs on June 29, 1979, codified at 10 CFR part 430, subpart B, appendix H. 44 FR 37938. In May 2008, DOE received petitions from both the California Energy Commission (CEC) and the Consumer Electronics Association (CEA), which were drafted in light of the June 13, 2009, Federal Communications Commission (FCC) transition from analog to digital broadcast transmissions for TVs.[1] As of June 12, 2009, the Digital Transition and Public Safety Act of 2005 required that all broadcasting stations transmit in digital to make analog frequencies available for public safety communications.[2] Both the CEC and the CEA petitioned for repeal of the regulatory provisions establishing the test procedure. CEC's petition stated that the old test procedure was not capable of accurately measuring the energy consumption of modern TVs because TV broadcasting is no longer transmitted via an analog signal.[3] In addition, the CEA petitioned for DOE's adoption of the International Electrochemical Commission's (IEC) test procedure IEC 62087–2008, ''Methods of measurement for the power consumption of audio, video and related equipment.'' 74 FR 53641. In light of these petitions, and the fact that the previous test procedure was largely obsolete for today's products because of the mandated transition from analog to digital signal transmission, DOE repealed the test procedure on October 20, 2009. The test procedure DOE is proposing today seeks to rectify the problem with the old test procedure by allowing for accurate measurement of the energy consumption of modern TVs.

DOE notes that the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) directs Federal agencies to use voluntary consensus standards in lieu of Government standards whenever possible. Consequently, as described in today's NOPR, DOE incorporates by reference in its test procedures the generally accepted test procedures or recognized industry standards, such as those issued by the IEC, the Environmental Protection Agency (EPA), or the CEA, that provide either specific aspect(s) of the test procedure, or complete test procedures, for the specified modes.

As the first step in this rulemaking to establish a new test procedure, DOE published a Request for Information on September 3, 2010, 75 FR 54048, (the 2010 RFI) requesting stakeholders to provide information and views on DOE utilizing both the IEC 62087–2008 and the ENERGY STAR Program Requirements for Televisions, Version 4.1 (ENERGY STAR v. 4.1) as reference standards for the basis of a new DOE test procedure.[4] DOE also solicited

[1] Energy Conservation Program: Repeal of Test Procedures for Televisions. 74 FR 53640 *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/74fr53640.pdf.*

[2] Digital transition mandated by Public Safety Act of 2005 *http://www.fcc.gov/cgb/consumerfacts/digitaltv.html.*

[3] Chamberlain, William M., ''Petition of the California Energy Commission to Repeal the Test Method for Television Sets in 10 CFR. Part 430 Subpart B.'' May 23, 2008. *http://www.energy.ca.gov/appliances/2008rulemaking/documents/2008-05-15_workshop/other/Petition_Of_The_CEC_To_Repeal_The_Test_Method_For_Television_Sets_In_10_CFR_Part_430_Subpart_B.pdf.*

[4] When the RFI was published, the most current version of EPA's test procedure was ENERGY STAR v. 4.1 and the most recent version of the IEC–62087 was 2008. Since then, EPA has published an updated version, ''ENERGY STAR Program

Continued

comments on the key issues affecting the development of a new test procedure including the following:

(1) An appropriate method for ensuring screen brightness,

(2) Utilizing the nine point video signal,

(3) An appropriate method for measuring screen luminance,

(4) Requiring testing on all preset viewing modes,

(5) Testing multiple illuminance levels (specifically 10, 100, 150, and 200 lux),

(6) An appropriate method for generating illuminance,

(7) The best possible signal source and connection to that signal source,

(8) An appropriate stabilization time for luminance and power measurements,

(9) An appropriate method of testing 3D energy consumption,

(10) Measuring download acquisition mode (DAM) power,

(11) Measuring internet connectivity power,

(12) Measuring power saving technology energy (including presence sensors, display power management systems (DPMS), and high-definition multimedia interface consumer electronic controls (HDMI-CEC)), and

(13) The scope of coverage for the rulemaking. 75 FR 54048.

II. Summary of the Notice of Proposed Rulemaking

In today's NOPR, DOE is proposing a new test procedure for determining the energy use of TVs. The proposed test procedure includes measuring screen luminance and testing energy consumption for active (on mode), standby, and off modes.

The luminance test is proposed to be performed by measuring the screen luminance while the TV is displaying the IEC 62087–2011 three bar video signal in both the home and retail picture settings. The luminance test is being proposed to allow the ENERGY STAR program to utilize the measurement. The on mode test will measure on mode energy consumption when the TV is displaying the IEC 62087–2011 dynamic broadcast-content video signal. If the TV is shipped with an automatic brightness control (ABC) sensor enabled by default, on mode will be tested at various room illuminance levels. If the TV does not have an ABC sensor or the sensor is disabled by default, the test would be performed while the TV is in the home picture setting.

DOE's proposed standby test procedure incorporates both IEC 62087–2011 ''Methods of measurement for the power consumption of audio, video and related equipment'' and the CEA ''Procedure for DAM Testing: For TVs'' (CEA DAM test procedure). DOE's proposed off mode test procedure incorporates IEC 62087–2011.

Although DOE is aware of TVs with additional modes, DOE is not proposing to require testing these, but rather is simply considering these modes and requesting comment on them. These modes include:

(1) On mode tests for TVs with internet connectivity;

(2) 3D mode, if capable; and

(3) Standby-active, low mode (when the internet is enabled but the TV is in standby, and the TV is not sending or receiving external data, for those TVs with internet access).

To supports its efforts in developing a Federal test procedure, DOE conducted various tests, the results of which can be found on the DOE Web site.[5] The information found on the DOE Web site helps support this NOPR by providing additional data and clarification. DOE conducted testing at two different testing facilities and therefore some of the data is organized according to where that data was collected. The data from test facility one is denoted with numerical values, while the data from test facility two is denoted with alphabetical letters. The test facilities were determined to produce similar results as indicated in the Round Robin Test Program Final Report for Televisions. This information, found on the DOE Web site,[6] includes the following:

(1) Television Test Procedure Comparison Chart which compares key aspects of various TV standards including IEC 62087–2011, CEA 2037–2010, ENERGY STAR version 5.1, CEC, BS EN 62087 ''Methods of measurement for the power consumption of audio, video, and related equipment'', and EN 62087 ''Methods of measurement for the power consumption of audio, video, and related equipment''.

(2) Video Signal of Test Patterns Comparison Table which compares the different advantages and disadvantages of particular video signals including the 3-bar, 9-point, DOE 5-point, and dynamic video signals. DOE assessed these video signals based on their availability, impact on average picture level (APL), affect on power limiting, and interested party input among other features.

(3) Room Illuminance Measurements During TV Viewing: Pilot Study which summarizes a pilot study that DOE conducted to continuously measure room illuminance in nine homes over a period of a week or more as well as taking discrete one-off measurements at different locations in the room. This document also sets out the detailed methodology that DOE used for its pilot study.

a. Room Illuminance Measurements During TV Viewing: Pilot Study Data which includes the source data which was analyzed to develop the conclusions in the pilot study.

(4) Round Robin Test Program Final Report for Televisions that summarizes a round robin test study to assess the repeatability and reproducibility of TV energy test results. This round robin study utilized the ENERGY STAR version 5.1 test procedure across three labs and compares their results.

(5) Television Energy and Luminance Test Data Set which includes the energy and luminance data for all of the TVs on which DOE conducted testing.

(a) Television Luminance Data which includes test results for luminance testing using the 9-point (both perpendicular and off-axis measurements), 5-point Video Electronics Standards Association (VESA), and DOE 5-point video signals. DOE conducted luminance testing based on the ENERGY STAR version 5.1 test procedure but altered the video signal to determine which video signal was most appropriate. DOE used the 3-bar static video signal specified in IEC 62087 Ed. 2.0 as well as the 9-point, VESA 5-point, and DOE 5-point video signals as specified in this NOPR.

(b) Television Luminance Stabilization Period Data which includes graphs indicating how TV screen luminance changes over time and with respect to different stabilization periods. DOE took measurements of screen luminance after different stabilization periods to determine the most appropriate method for conducting luminance testing. DOE initially warmed-up the TVs using the method from IEC 62087–2011 and then displayed the video signal for 15 minutes to conduct the luminance measurement. The second luminance measurement was taken after a 10 minute warm-up period followed by 2 minutes of a black screen. DOE tested this stabilization period for both the IEC 3-bar and 9-point video signals.

Requirements for Televisions, Version 5.3'' and the IEC has published an updated version, ''IEC 62087–2011.''

[5] The DOE Web site: *Appliance and Commercial Equipment Standards: Television Sets.* U.S. Department of Energy. August 2, 2011. *http://www1.eere.energy.gov/buildings/appliance_standards/residential/tv_sets.html.*

[6] *Id.*

(c) Television Power Data that includes test results for power consumption testing while TVs are in various different modes. DOE conducted this testing according to the ENERGY STAR version 5.1 test method, but adjusted specific aspects on the TV to determine the energy consumption associated with that particular feature including volume, ABC, and internet connectivity.

(d) Television Internet Standby Data which is comprised of data indicating the energy consumption when TVs are in standby mode and connected to various external sources including HDMI, cable, Ethernet, and wireless internet. DOE conducted power consumption testing according to the ENERGY STAR v. 5.3 standby test procedure while alternating the specific internet connections present on the TV.

(e) Television 9-point Video Signal Comparison Data that includes data depicting the difference between perpendicular and off-axis measurements while the TV is displaying the 9-point video signal. Luminance results were collected according to the ENERGY STAR version 5.1 test procedure, except that DOE altered the video signal to the 9-point video signal specified in this NOPR.

(f) Television On Mode Automatic Brightness Control Data which includes the power and luminance data for TVs tested by DOE with ABC enabled by default across various room illuminance levels. A PowerPoint which charts some of this data is also included to demonstrate the range of implementation of ABC among TVs tested by DOE. DOE conducted power consumption testing according to the ENERGY STAR v. 5.3 (with additional room lighting levels) using the IEC dynamic test clip specified in IEC 62087 Ed. 2.0. Luminance results were collected according to the ENERGY STAR version 5.1 test procedure, using the 3-bar static test pattern specified in IEC 62087 Ed. 2.0.

(g) Television Download Acquisition Mode Data which includes data indicating the energy consumption associated with DAM mode. DOE conducted this testing on two TVs by configuring the internal electronic program guide (not enabled by default) and connecting to a subscription cable service by (1) coaxial cable only, (2) Ethernet only and (3) cable and Ethernet together. Results over a 24 hour period were recorded and charted for each connection configuration.

(h) Television 3D Mode Data that contains data as to TV energy consumption while in various 3D modes. This testing was conducted on five TVs under the following modes: When the TV is displaying a 3D video signal, when the TV is up-converting a 2D video signal to 3D, and when the TV is receiving a video signal from a Blu-ray player that has up-converted a 2D video signal to 3D.

DOE believes that the proposed test procedure will accurately represent the energy consumption of TVs by capturing the annual energy consumption in on mode, standby mode, and off mode. However, DOE requests comments from interested parties on improvements or changes to the proposed test procedure. DOE will consider modifications that improve the accuracy, precision of language, or other elements of the procedure and/or decrease the testing burden. In submitting comments, interested parties should state the nature of the recommended modification and explain how it would improve upon the test procedure proposed in this NOPR. Interested parties should also submit data, if any, to support their positions.

III. Discussion

A. Effective Date and Compliance Date of Test Procedure

If adopted, the effective date for this test procedure would be 30 days after publication of the test procedure final rule in the **Federal Register**. At that time, the new metrics and any other measure of energy consumption which depends on these metrics may be represented pursuant to the final rule. Compliance with the new test procedure for representation purposes would be required 180 days after the date of publication of the test procedure final rule. On or after that date, any such representations, including those made on marketing materials and product labels, must be based upon results generated under the final test procedure proposed to be included in Appendix H to Subpart B of 10 CFR part 430.

Furthermore, EPCA requires the Federal Trade Commission (FTC) to prescribe labeling rules for certain covered products including TVs. (42 U.S.C. 6294(a)(2)(I)) Hence, the final DOE test procedure is required to be utilized by the FTC for labeling requirements and shall be utilized or referenced by other organizations, such as the EPA for its ENERGY STAR specification for TVs. This test procedure must also be referenced by the CEC in California and any other state regulation providing for the disclosure of information with respect to any measure of TV energy consumption once the test procedure becomes effective 30 days after the test procedure final rule publication. The final rule would supersede any existing state test procedure for TVs to the extent the state regulation requires testing in a manner other than that required by the final DOE test procedure. (42 U.S.C. 6297(a)(1))

B. Existing Television Test Procedures

While developing the proposed test procedure for TVs, DOE researched existing industry test procedures that measure TV energy consumption, as discussed in its 2010 RFI. 75 FR 54048, 54049. Among the most widely accepted are the IEC 62087–2011 and EPA's ''ENERGY STAR Program Requirements for Televisions, Version 5.3'' (ENERGY STAR v. 5.3).[7] DOE also reviewed both the CEA–2037–2009 ''Determination of Television Average Power Consumption'' and the CEC test procedures, and noted that these test procedures are largely based on both the EPA and IEC 62087 test procedures. In response to the 2010 RFI, DOE received comments from interested parties on what they believed aspects of a robust test procedure should include, as well as on the validity of the existing test procedures that DOE reviewed and considered.

Several interested parties expressed general concerns and made suggestions pertaining to what should be considered when DOE developed its proposed test procedure. Consumer Electronics Retailers Coalition (CERC) expressed desire for a standardized test procedure and standard that are reflective of consumer use and that will not increase the cost of equipment. CERC further stated that a patchwork of state regulations, mandating different test procedures for energy consumption, different standards, or different labels, will confuse consumers with conflicting or unclear information, and ultimately be counterproductive. (CERC, No. 10 at p. 1) CERC urged DOE to adopt a single federal test procedure for TV energy consumption, because it will better inform the public and better show energy savings. (CERC, No. 10 at p. 2) Natural Resources Defense Council (NRDC) asked that DOE develop a test procedure that allows flexibility for policy makers when setting standards such as allowing policy makers to require testing at different pre-set picture settings and establishing desired luminance ratios. (NRDC, No. 5 at p. 1)

[7] ENERGY STAR v. 5.3 references ENERGY STAR v. 4.2; however, for the purposes of the NOPR, all references will be made in terms of ENERGY STAR 5.3 although testing was conducted using ENERGY STAR 5.1. *http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/television/V5.3_Program_Requirements.pdf.*

Pacific Gas and Electric (PG&E) and a joint comment submitted by Southern California Gas Company, San Diego Gas and Electric Company, and Southern California Edison, henceforth referred to as ''California Investor Owned Utilities (IOUs),'' expressed desire for a test procedure that accounts for all current and future TV technologies. (PG&E, No. 12 at p. 1; California IOUs, No. 9 at p. 1) Finally, Sony asked that the test procedure provide adequate guidance and meaningful power consumption data without forcing manufacturers to perform unnecessary, burdensome, and costly activities. (Sony, No. 8 at p. 4)

Environment Northeast (ENE) also had general recommendations for DOE's proposed TV test procedure and suggested that the test procedure should be designed so that the test results reflect energy consumption in the field to the maximum extent possible. (ENE, No. 2 at p. 1) It urged DOE to develop a test procedure that only promotes energy management features that deliver significant savings in the field. (ENE, No. 2 at p. 1) ENE commented that energy consumption should be measured under a range of values (rather than using average values for ambient illumination, viewing distances and angles, and user adjustments to settings) and that the average expected energy consumption of a model in the field be calculated. (ENE, No. 2 at p. 1) ENE believes that a test procedure that adheres to its direction will provide more accurate results and reduce the likelihood of manufacturers ''designing to the test''. (ENE, No. 2 at p. 1) Finally, ENE urged DOE to design a test procedure that does not discourage innovation. (ENE, No. 2 at p. 1)

Other interested parties commented that DOE should use existing test procedures when developing its test procedure. NRDC stated that DOE should review and adopt key portions of IEC 62087–2008 but noted that aside from the IEC 62087–2008 dynamic broadcast-content video signal, the remaining sections of the IEC 62087–2008 test procedure are either incomplete or need revision. (NRDC, No. 5 at p. 2) CEA believes that future ENERGY STAR specifications should conform to the DOE test procedure, and that CEA–2037–2009 is suitable for adoption now with specified discrete changes, although the CEA did not specify these discrete changes. (CEA, No. 13 at p. 2) CEA also urged DOE to adopt CEA–2037–2009 to avoid the federal government using and promoting two different test procedures. (CEA, No. 13 at p. 3) CERC commented that the CEA–2037–2009 test procedure is the best test procedure because it is most familiar to manufacturers and retailers and added that it provides a reasonably accurate, practicable, and cost-effective test procedure. (CERC, No. 10 at p. 2) SHARP urged the DOE to utilize IEC 62087–2008 and CEA–2037–2009 as a basis for its test procedure. (SHARP, No. 14 at p. 1) Finally, Mitsubishi requested that DOE adopt CEA–2037–2009 as its fundamental TV test procedure, and commented that if DOE finds that CEA–2037–2009 test procedure is inadequate, then it should base its test procedure on IEC 62087–2008. (Mitsubishi, No. 7 at p. 2)

Sony and CEC asked DOE to consider how its test procedure will affect state regulations and test procedures. Sony recommended that DOE create a test procedure that supersedes state regulations, while CEC believes that DOE should consider how its test procedure will preempt CEC's test procedure. (Sony, No. 8 at p. 4) Specifically, CEC urged DOE to measure on mode power, standby-passive power, power factor, and luminance to ensure that the CEC can also require this testing. (CEC, No. 15 at p. 4)

In addition to considering stakeholder comments, DOE also conducted research and validation testing, which consisted of on, standby, and off mode energy consumption testing as well as luminance testing. The results of this research indicated that the IEC 62087–2011 could be utilized with some modifications as it would adequately measure TV energy consumption.[8] DOE proposes a test procedure for TVs that uses IEC 62087–2011 as a basis, with additional detail and modifications, most of which are seen in ENERGY STAR v. 5.3. DOE believes this is consistent with the requests of many commenters, who recommended using IEC 62087–2011 and CEA–2037–2009, which references the IEC 62087 test procedure. DOE based the proposed luminance measurement on the one found in ENERGY STAR v. 5.3.

C. Scope

1. Products Covered by This Rulemaking

In the 2010 RFI, DOE requested comments on the scope of the TV test procedure rulemaking. DOE received comments highlighting the similarities and differences between displays, TVs, and digital picture frames and the coverage of the test procedure. Unlike TVs, displays and digital picture frames do not have a TV tuner and therefore cannot receive digital broadcast content. While all of these technologies have the ability to display digital content they do have some differences. DOE notes that these differences are subtle, and therefore considered the possibility of including all displays in this rulemaking.

Display and TV technologies have started to converge and have become more similar in their capabilities. Given the convergence of display and TV technologies, PG&E, and the California IOUs advocated that the coverage of displays be explored in this rulemaking. They supported DOE's research into whether displays should be incorporated into the test procedure and specifically stated that DOE should study the category of displays less than 30 inches in greater detail as well as displays greater than 60 inches. (PG&E, No. 12 at p. 4; California IOUs, No. 9 at p. 4)

Other stakeholders opposed the inclusion of displays in the scope of the rulemaking. Sony asserted that TVs and displays are different in the following ways and therefore need to be tested differently. TVs have different resolutions than displays because rate conversion circuits operate differently in the two products; resolution affects power consumption in displays but not in TVs; and TVs with computer inputs do not fully comply with the VESA DPMS requirements established for displays. (Sony, No. 8 at p. 4) Rather, Sony recommended that DOE use the same definition for TVs that is used in the ENERGY STAR v. 5.3.[9] (Sony, No. 8 at p. 4) Panasonic also does not recommend combining TVs and displays, as they believe these are two distinct products. (Panasonic, No. 6 at p. 9) CERC commented that the scope of the test procedure should not encompass all types of TVs because professional and retail displays require high luminance, sharpness, and performance. (CERC, No. 10 at p. 3) CERC further commented that displays are designed differently than TVs due to their primary use; namely, TVs are meant to be viewed from further distances than displays. (CERC, No. 10 at p. 3) Finally, CEA commented that

[8] The DOE Web site: *Appliance and Commercial Equipment Standards: Television Sets.* U.S. Department of Energy. August 2, 2011. *http://www1.eere.energy.gov/buildings/appliance_standards/residential/tv_sets.html.*

[9] ENERGY STAR v. 5.3 defines TV as: A commercially available electronic product designed primarily for the reception and display of audiovisual signals received from terrestrial, cable, satellite, Internet Protocol TV (IPTV), or other digital or analog sources. A TV consists of a tuner/receiver and a display encased in a single enclosure. The product usually relies upon a cathode-ray tube (CRT), liquid crystal display (LCD), plasma display panel (PDP) which are examples of the more common display technologies.

DOE should not include displays in its rulemaking because the IEC 62087–2011 dynamic broadcast-content video signal used for TV testing is not representative of typical content viewed on displays. (CEA, No. 13 at p. 9) SHARP recommended that DOE remain focused on TVs that are used primarily by residential consumers and that commercial displays should not be included. (SHARP, No. 14 at p. 10)

DOE believes that some products can only be identified as TVs or displays on the basis of marketing. Some manufacturers (*e.g.,* Samsung and LG) make identical products that are marketed separately as a display and TV.[10] Moreover, there exist high-definition displays sold with the option of purchasing an external tuner or speakers, which enable the customer to use the product as a TV. Modern TVs can also typically be connected to computers and function as monitors. Despite some overlap, DOE agrees with stakeholders who suggested that TVs and displays are designed differently in most instances (*e.g.* TVs are equipped with a tuner and displays are not). Although TVs and displays may be used interchangeably, they are designed to perform different tasks. Displays have different screen resolutions that allow for clearer text reading and are typically set up in a 4:3 aspect ratio, as opposed to TVs which are primarily set up in 16:9 aspect ratio which is optimal for displaying video. DOE acknowledges that despite the increasing overlap between these products, which may increase in the future, they currently have different usage patterns (*e.g.* they are used in different lighting conditions and locations as well as have different hours of operation).

The presence of a tuner is not an unequivocal distinguishing factor between TVs and other displays; however, DOE still considers it a suitable way of broadly separating products which are generally intended to be used as displays or digital picture frames from those generally intended to be used as TVs (particularly in the smaller sizes). Accordingly, DOE proposes to define TVs with reference to displays but excluding displays if they are sold without tuners. Further, DOE believes that this effectively excludes from the proposed TV test procedure most displays and digital picture frames currently on the market.

TVs, unlike displays, often contain a tuner, which historically cost about $5.50 to the manufacturer and were projected to cost around $2.70 by the end of 2010.[11] Modern TVs have similar inputs to displays, and their uses are increasingly similar, with the latest TVs having USB ports, PC inputs, video inputs, Ethernet cable inputs, and inputs enabling connection with cameras and MP3 players (e.g., Samsung, Panasonic, Sony). Moreover, the latest display connection technology, High-Definition Multimedia Interface (HDMI), is expressly designed to work with both TVs and displays and does not differentiate between the two. DOE is monitoring marketplace convergence and will consider updating the definitions and scope of the TV rulemaking in the future.

Consequently, DOE is proposing to include in the scope of this rulemaking only displays of 15 inches and above which are sold with a tuner. DOE acknowledges interested party comments stating that TVs and displays capable of showing moving images are not similar in all ways. However, DOE believes that displays which are sold with a tuner are used in the same manner as TVs, and is also taking into consideration that EPA requires displays to be tested with IEC 62087 Dynamic broadcast content. DOE welcomes comment on the proposed scope of this rulemaking, particularly the inclusion of certain types of displays. (See Issue 1 in section V. E ''Issues On Which DOE Seeks Comment'').

2. Definition of Television Sets

TVs are a covered product under 42 U.S.C. 6292(a)(12) of EPCA. DOE has the authority to adopt test procedures for such covered products under 42 U.S.C. 6293(b)(2) of EPCA. Further, 42 U.S.C. 6295(l)(3) of EPCA specifically grants DOE the authority to promulgate energy conservation standards for TVs. There are no statutory definitions for TVs under EPCA. In 1979 DOE adopted the following regulatory definitions for TVs (44 FR 39798, June 29, 1979), which are set forth in 10 CFR 430.2:

Television set means a color television set or a monochrome television set.

Color television set means an electrical device designed to convert incoming broadcast signals into color television pictures and associated sound.

Monochrome television set means an electrical device designed to convert incoming broadcast signals into monochrome television pictures and associated sound.

Similar to DOE's recently repealed test procedure (74 FR 53640, October 20, 2009), the current DOE definitions for TVs, developed in 1979, are no longer appropriate and are proposed to be updated as part of this rulemaking. The definition refers to both color TVs and monochrome TVs (also known as black-and-white TVs, which are rarely produced for the mass market today) and with the evolution of technology, these definitions are too broad to adequately define the products covered by this rulemaking. Since the digital switch-over in 2009, analog TVs can no longer receive broadcast signals without an external digital tuner. Accordingly, the definitions require updating in order to reflect the realities of modern TVs and technological developments, including the convergence of display and TV technology, and to avoid the proposed rule being rendered ineffective.

DOE notes that at the time the Department repealed the test procedure for TVs (74 FR 53640, October 20, 2009), it also considered amending the definition of TVs on the basis of the transition to digital TV and found this factor in isolation to be an insufficient reason to amend the definition. At that time, the Department had not taken into account other factors, including, rapid technology changes, the changing focus away from transmission towards display technology and the phenomenon of TV and display technology convergence. The combination of these factors which are currently evident in this product market have led DOE to preliminarily determine that a revised definition of TVs is required.

CEA asked that DOE develop a definition of TVs that excludes battery-powered TVs because they inherently are designed for efficiency so as to improve battery life. CEA stated that battery-powered TVs are different from typical TVs that require AC or main power supplies in their technology and usage patterns. (CEA, No. 13 at p. 9) Additionally, CEA commented that displays used for commercial applications and those that fully function on battery-power should not be included in the scope of coverage. CEA further observed that portable and handheld displays are designed to be power efficient and should therefore not be included in the scope of coverage.

In today's NOPR, after reviewing TV, display, digital picture frame market trends, and accessory technologies, as well as other industry definitions from IEC, EPA, and CEA, DOE is proposing an updated definition for TVs; one that it believes will not become obsolete with rapid changes in technology.

[10] Personal Communication, DisplaySearch at SID Conference, May 22, 2011.

[11] Quarterly LCD TV Cost & Price Forecast Model Report: Q1'11 History with Q2'11–Q4'15 Forecast. Rep. DisplaySearch, 2010.

Accordingly, a broad technology-neutral definition is proposed that includes all TVs and displays above 15 inches which are sold with a TV tuner. This definition also includes products that incorporate internal media readers (e.g. TV DVD combination units) while excluding laptop monitors, monitors having integrated computers (all-in-one integrated desktops), digital picture frames, and TVs operable by battery-power. The exclusion of these products is based upon DOE's belief that these products do not represent the typical TV usage and therefore should not be included in this definition. DOE has determined the typical TV usage as a product that is commonly used seven hours a day [12] to watch dynamic visual information. Consequently, DOE proposes the following definition to subpart A of 10 CFR 430.2:

Television set (also referred to as ''TV''): A product designed to be powered primarily by mains power having a diagonal screen size of fifteen inches or larger that is manufactured with a TV tuner, and that is capable of displaying dynamic visual information from wired or wireless sources including but not limited to:

(1) Broadcast and similar services for terrestrial, cable, satellite, and/or broadband transmission of analog and/or digital signals; and/or

(2) Display-specific data connections, such as Video Graphics Array (VGA), Digital Visual Interface (DVI), High-Definition Multimedia Interface (HDMI), DisplayPort, used typically for a computer or workstation that is not physically attached to the display; and/or

(3) Media storage devices such as a USB flash drive, a memory card, or a DVD; and/or

(4) Network connections, usually using Internet Protocol, typically carried over Ethernet or WiFi.

A TV may contain, but is not limited to, one of the following display technologies: Liquid crystal display (LCD), light-emitting diode (LED), cathode-ray tube (CRT), and plasma display panel (PDP). TVs also include TV Combination Units that DOE has further defined in appendix H to subpart B of this part.

DOE notes that this proposed definition also includes TV combination units which are TVs that incorporate additional devices such as a digital video disc (DVD) player, Blu-ray player, hard disk drive (HDD), or videocassette recorder (VCR).These products maintain the general purpose of a TV but are combined with additional features.

[12] The Nielsen Company, LLC (2011).

3. Other Definitions

DOE's proposed test procedure for TVs incorporates definitions from IEC 62087–2011 and ENERGY STAR v. 5.3. DOE is also proposing to add its own definitions, which were neither addressed by IEC 62087–2011 nor ENERGY STAR v. 5.3, and feels the proposed definitions are necessary.

Specifically, DOE proposes to include the following defined terms found in IEC 62087–2011: ''additional functions,'' ''off mode,'' ''standby-active, high mode,'' ''standby-active, low mode,'' and ''standby-passive mode.'' DOE is aware that section 42 U.S.C. 6295(gg)(1) of EPCA defines on, standby, and off modes, but believes that the proposed IEC 62087–2011 definitions provide added clarification to the test procedure. Second, DOE proposes to include the following defined terms found in ENERGY STAR v. 5.3: ''download acquisition mode,'' ''luminance,'' ''on mode,'' and ''TV combination unit.'' For the reasons discussed below, DOE also proposes to develop new definitions for ''home picture setting'' and ''retail picture setting.''

a. Definitions Incorporated From IEC 62087–2011

DOE is proposing to define ''additional functions'' using the definition found in IEC 62087–2011. DOE is proposing to define ''additional functions'' because many TVs are now equipped with a wide variety of features, such as DVD players, memory card readers, music player inputs, that are not standard among different manufacturers and models. Furthermore, DOE believes that this definition from IEC 62087–2011 is appropriate because it is clear, concise and widely accepted as an industry definition. The definition for additional functions found in IEC 62087–2011 also has not been redefined by any of the later published TV industry standards. Accordingly, DOE is proposing to define this term in section 2.1 (additional functions) of appendix H to subpart B of 10 CFR part 430 as follows:

Additional functions: Additional functions are functions that are not required for the basic operation of the device. Additional functions include, but are not limited to a VCR unit, a DVD unit, a HDD unit, a FM-radio unit, a memory card-reader unit, or an ambient lighting unit.

DOE is proposing to define ''off mode'' using the definition found in IEC 62087–2011, rather than the definition provided in ENERGY STAR v. 5.3. Although ENERGY STAR v. 5.3 also defines off mode, DOE believes the definition is too broad. Specifically, the ENERGY STAR v. 5.3 definition requires that an indicator be present that shows that the product is in off mode, a clause that is not included in the IEC 62087–2011 definition. Accordingly, DOE is proposing to define this term in section 2.9 (off mode) of appendix H to subpart B of 10 CFR part 430 as follows:

Off mode: Off mode is the mode where the appliance is connected to a power source, produces neither sound nor picture and cannot be switched into any other mode with the remote control unit, an external or internal signal.

DOE is proposing a test for standby-passive mode in this NOPR and thus provides a definition for the mode. DOE is proposing to define ''standby-passive mode'' by using the IEC 62087–2011 definition for standby-passive. This standby-passive mode test is being proposed to capture the energy consumption associated with the TV when it produces neither sound nor picture. DOE believes that IEC has clearly and appropriately defined standby-passive mode. DOE is proposing to define this term in section 2.12 (standby-passive mode) of appendix H to subpart B of 10 CFR part 430 as follows:

Standby-passive mode: Standby-passive mode is the mode in which the appliance is connected to a power source, produces neither sound nor picture but can be switched into another mode with the remote control unit or an internal signal.

DOE is proposing to define ''standby-active, high mode'' consistent with the IEC 62087–2011 definition for standby-active, high. IEC's definition clearly and accurately captures the state of the TV while in standby-active, high mode. DOE is proposing a definition for standby-active, high, since DOE is also proposing a test in the standby-active, high mode. Standby-active, high mode would cover TVs when they are switched off with a remote, but remain active in some manner. This includes TVs that are downloading information from the internet or cable while switched into standby mode. Accordingly, DOE is proposing to define this term in section 2.13 (standby-active, high mode) of appendix H to subpart B of 10 CFR part 430 as follows:

Standby-active, high mode: The appliance is connected to a power source, produces neither sound nor picture but can be switched into another mode with the remote control unit or an internal signal and can additionally be switched into another mode with an external signal and is exchanging/receiving data with/from an external source.

DOE is proposing to define ''standby-active, low mode'' consistent with the

IEC 62087–2011 definition for standby-active, low. Although DOE is not proposing a test in the standby-active, low mode, DOE is still proposing a definition for standby-active, low to remain consistent with IEC 62087–2011 and to ensure that this particular mode is not tested. DOE has reviewed existing industry definitions, TV technology, and TV operating modes and believes that IEC 62087–2011 clearly separates distinct TV operating modes and defines each of these modes appropriately. Standby-active low mode would cover TVs when they are switched off with a remote and can be switched into other modes via an external signal. Accordingly, DOE is proposing to define this term in section 2.14 (standby-active, low mode) of appendix H to subpart B of 10 CFR part 430 as follows:

Standby-active, low mode: The appliance is connected to a power source, produces neither sound nor picture but can be switched into another mode with the remote control unit or an internal signal and can additionally be switched into another mode with an external signal.

b. Definitions Incorporated From ENERGY STAR v. 5.3

DOE proposes to include a definition for ''download acquisition mode'' (otherwise known as DAM) in its test procedure that is identical to the definition found in ENERGY STAR v. 5.3. The DAM involves a TV's download of data while it produces neither sound nor picture. The definition allows readers to more clearly understand the DAM energy consumption test procedure. The energy consumption associated with DAM is measured when the TV is downloading information from an electronic program guide (EPG). DOE also believes that the ENERGY STAR v. 5.3 definition is appropriate because it is a widely accepted industry definition and the term is not defined in IEC 62087–2011. Accordingly, DOE is proposing to define this term in section 2.3 (download acquisition mode) of appendix H to subpart B of 10 CFR part 430 as follows:

Download acquisition mode: Download acquisition mode is the power mode in which the product is connected to a mains power source, produces neither sound nor picture, and is actively downloading data. Data downloads may include channel listing information for use by an electronic programming guide, TV setup data, channel map updates, firmware updates, monitoring for emergency messaging/communications or other network communications.

DOE is proposing to define ''luminance'' by incorporating the definition found in ENERGY STAR v. 5.3. DOE believes that the ENERGY STAR v. 5.3 definition is appropriate because it is widely accepted within the industry and the term is not defined in IEC 62087–2011. Further, the ENERGY STAR v. 5.3 definition is appropriate because DOE is proposing the luminance ratio so that it may be used in the ENERGY STAR test procedure. The ENERGY STAR v. 5.3 definition is clear and concise and provides the manufacturer with a thorough understanding of what is meant by luminance to allow for luminance testing. Accordingly, DOE is proposing to define this term in section 2.8 (luminance) of appendix H to subpart B of 10 CFR part 430 as follows:

Luminance: Luminance is the photometric measure of the luminous intensity per unit area of light traveling in a given direction, expressed in units of candelas per square meter (cd/m2).

DOE is proposing to define ''on mode'' using the definition found in ENERGY STAR v. 5.3, rather than the definition provided in IEC 62087–2011. ENERGY STAR v. 5.3 defines ''on mode'' more broadly, stating that the TV can be providing ''one or more of its primary functions.'' On the other hand, the IEC 62087–2011 definition specifies that the TV must be producing both sound and picture. Although many TVs will produce sound and picture, DOE's proposed scope may include units that are not able to produce sound (e.g. computer monitor that does not include speakers). Because DOE does not want to prevent those products from being tested in the ''on mode'', DOE is proposing to exclude any references to sound consistent with the definition from ENERGY STAR v. 5.3 in section 2.10 (on mode) of appendix H to subpart B of 10 CFR part 430 as follows:

On mode: On mode is the power mode in which the product is connected to a mains power source, has been activated, and is providing one or more of its principal functions.

DOE is proposing to define ''TV combination unit'' using the definition found in ENERGY STAR v. 5.3. IEC 62087–2011 defines multi-function equipment, which may be considered similar to TV combination unit, but this term is not specific to TVs. Defining the term TV combination unit provides clarity to the test procedure since these particular TVs may require special consideration when being tested. Accordingly, DOE is proposing to define this term in section 2.16 (TV combination unit) of appendix H to subpart B of 10 CFR part 430 as follows:

TV combination unit: TV combination unit is a television in which the TV and one or more additional devices (e.g., DVD player, Blu-ray Disc player, Hard Disk Drive) are combined into a single enclosure, and which meets the following criteria: a) it is not possible to measure the power of the individual components without removing the product housing; and b) the product connects to a wall outlet via a single power cord.

c. New Definitions for Incorporation

DOE is proposing to define ''home picture setting'' in its test procedure. DOE developed this definition because neither IEC 62087–2011 nor ENERGY STAR v. 5.3 provides a definition for this particular setting. ENERGY STAR v. 5.3 does reference a home mode (or default mode), as the mode in which the TV is shipped. In order to eliminate confusion between picture settings and testing modes (such as on mode, standby mode, and off mode), defining home picture setting helps clarify how to conduct both the luminance and on mode tests since home picture setting is utilized for conducting part of the luminance test as well as the on mode test. DOE believes that defining home picture setting will improve the consistency in which products are tested across labs. DOE is proposing to define this term in section 2.4 (home picture setting) of appendix H to subpart B of 10 CFR part 430 as follows:

Home picture setting: (or default picture setting) is the picture setting which is recommended by the manufacturer from the initial set up menu or the mode that the television comes shipped in if no setting is recommended.

Finally, DOE is proposing to define ''retail picture setting'' in its proposed test procedure. Retail picture setting is a picture setting present on most TVs and corresponds to the brightest preset selectable picture setting. Although ENERGY STAR v. 5.3 uses the term retail mode in its specification, it does not provide a definition of this mode. So as not to confuse picture settings with testing modes (such as on mode, standby mode, and off mode), DOE is proposing to utilize the term ''retail picture setting'' instead of the term ''retail mode''. In the proposed DOE test procedure, retail picture setting is one of the two picture settings that the TV is set to for luminance testing. Therefore, DOE believes that defining retail picture setting clarifies the requirements of the test procedure. DOE is proposing to define this term in section 2.11 (retail picture setting) of appendix H to subpart B of 10 CFR part 430 as follows:

Retail picture setting: is the preset picture setting in which the TV produces the highest luminance during the on mode conditions.

D. Testing Conditions and Instrumentation

1. Accuracy and Precision of Measurement Equipment

a. Power Supply

In this NOPR, DOE is proposing a slightly modified version of the power supply specifications from IEC 62087–2011. DOE proposes to limit the input voltage and frequency used in its test procedure to 115 V at 60 Hz, rather than including a general requirement that the TV be tested at ''the nominal voltage of the region,'' as in IEC 62087–2011. DOE is also proposing to add a power factor measurement requirement. The power factor measurements are based on those found in IEC 62087–2011 as well as ENERGY STAR v. 5.3.

DOE is also proposing certain specifications for test tolerances. First, DOE is proposing to incorporate tolerances for voltage and frequency identical to those in ENERGY STAR v. 5.3, which specifies that the voltage and frequency be maintained at ± 1 percent rather than ± 2 percent, as required by IEC 62087–2011. DOE believes that this will not impose undue burden because many interested parties are already accustomed to these more stringent specifications required to meet ENERGY STAR specifications. Second, DOE is proposing to add a tolerance of power measurements consistent with that in ENERGY STAR v. 5.3. As mentioned above, ENERGY STAR v. 5.3 refers the reader to ENERGY STAR v. 4.2 where these specifications can be found. Third, DOE is proposing to add the requirements for total harmonic distortion (THD) consistent with that in IEC 62087–2011, which requires that the harmonic components not vary by more than 5 percent. While ENERGY STAR v. 5.3 has requirements for THD that are more stringent (2 percent), DOE believes that these requirements may impose undue burden on manufacturers by requiring the purchase of more expensive equipment. DOE believes that the cost of more expensive equipment (e.g., a power supply unit as found by market research) outweighs the benefits of stricter THD requirements, therefore less stringent requirements are being proposed. DOE believes that the requirements that it is proposing to incorporate are accepted within industry and are sufficient to ensure a repeatable and reproducible test procedure. THD impacts the quality and stability of the electricity being received by the TV which can impact energy consumption. High levels of THD can increase current draw on TVs resulting in high circuitry temperatures and inefficiencies. The language proposed to ensure that the correct power is being supplied to the TV is being incorporated in section 3.1.1 (power supply) of appendix H to subpart B of 10 CFR part 430 is as follows:

> Carry out measurements using a power supply providing voltage of 115 V at 60 Hz.
>
> The fluctuation of the voltage supplied during the tests shall not exceed ± 1 percent. The frequency fluctuation and the harmonic components of the supplied power shall not exceed ± 1 percent and 5 percent respectively.

b. Power Meter

DOE is proposing to incorporate specifications for the power meter used to collect the power data for the TV test. DOE plans to slightly modify the specification found in IEC 62087–2011 to include more guided instructions on the sampling rate. Rather than setting the sampling rate ''high enough to achieve an accurate measurement'' as required in IEC 62087–2011, DOE is proposing that samples be taken once per second or more frequently. This sampling rate is generally accepted by the industry and found in IEC 62301–2011. This sampling rate should not be difficult to accomplish and produces a more repeatable power measurement than the measurement specified in IEC 62087–2011. Specifying the proposed sampling rate decreases the chances of missing trends and power spikes. The duration of testing remains the same and typically only a few changes to the data acquisition program are required to modify the sample rate. The language proposed to ensure that the correct power measurements are taken is being incorporated in section 3.1.2 (power meter) of appendix H to subpart B of 10 CFR part 430 is as follows:

> The measurement shall be carried out directly by means of a wattmeter, a wattmeter with averaging function, or a watt-hour meter, by dividing the reading by the measuring time. For TVs for which the input video signal varies over time, use a wattmeter with an averaging function to carry out the measurement.

The language proposed to ensure that the correct sampling rate for which the power measurements shall be taken is being incorporated in section 3.1.2.1 of appendix H to subpart B of 10 CFR part 430 is as follows:

> The sampling rate of the watt-hour meter or wattmeter with averaging function shall be one measurement per second or more frequent.

The language proposed describing the power measurement uncertainty is being incorporated in section 3.1.2.3 of appendix H to subpart B of 10 CFR part 430 is as follows:

> Power measurements of 0.5 W or greater shall be made with an uncertainty of less than or equal to 2 percent (at the 95 percent confidence level). Measurements of power of less than 0.5 W shall be made with an uncertainty of less than or equal to 0.01 W (at the 95 percent confidence level). The power measurement instrument shall have a resolution of:
>
> • 0.01 W or better for power measurements of 10 W or less;
>
> • 0.1 W or better for power measurements of greater than 10 W up to 100 W;
>
> • 1 W or better for power measurements of greater than 100 W.

DOE is also proposing to require that, as part of the test procedure, the power factor of the TV be recorded while in ''on mode'' consistent with that in ENERGY STAR v. 5.3. DOE believes that requiring a power factor measurement will not impose undue burden on manufacturers because the ability to measure power factor is widely available on power meters. The power factor measurement only requires that the power factor be recorded while the on, standby, and off modes are measured. DOE is proposing to require this measurement because power quality can impact energy consumption and measuring the power factor will allow other regulating bodies the flexibility to consider requirements for power quality. The language proposed to ensure that the power factor and real power consumed are taken is being incorporated in section 3.1.2.2 of appendix H to subpart B of 10 CFR part 430 is as follows:

> The power measurement instrument used shall measure the power factor and the real power consumed regardless of the power factor of the device under test.

c. Light Measurement Devices

i. Luminance Contact and Distance Meters

Light measurement devices (LMDs) are used to measure the luminance of the TV screen. DOE is aware of two primary categories of LMDs that are used to make luminance measurements: contact meters and distance meters. In response to the 2010 RFI, DOE received comments advocating that the DOE test procedure for TVs allow the use of the contact meter to measure luminance. Panasonic stated that although there are many valid methods of measurement, a contact measurement is easier to comply with since it prevents ambient light from interfering with the measurement and eliminates the need for a dark room. (Panasonic, No. 6 at p. 4) NRDC also supports the contact method of measuring luminance as it simplifies the performance of the test due to it being unnecessary to adjust the room lighting levels. (NRDC, No. 5 at pp. 4–5)

In this NOPR, DOE is proposing to allow the use of either a distance meter or a contact meter to measure luminance for purposes of the DOE test procedure, so long as the meter meets the specifications detailed in section III.D.1.c.ii of the NOPR. DOE is aware that each type of meter has specific advantages. While distance LMD meters are typically less accurate and require the use of a dark room for luminance measurements, they are less expensive than contact LMD meters. DOE is also aware that the use of a dark room adds burden to the procedure by increasing both cost and set-up time. Alternatively, the use of a contact LMD meter would reduce set up time (with regard to both aligning the meter as well as removing the need for a dark room) and will have a more accurate measurement since these meters typically have a higher accuracy; however, contact meters themselves are more expensive. Through testing, DOE has learned that the two types of meters yield similar results when used to test TVs.[13] Therefore, in section 3.1.3 (light measurement device) of appendix H to subpart B of 10 CFR part 430, the test procedure allows the use of either meter as long as it meets the specifications outlined below. By allowing the use of different meters it provides more flexibility, while ensuring the accuracy of the measurement and providing comparable results.

ii. Light Measurement Device Specifications

In this NOPR, DOE is proposing to incorporate specifications for the LMDs used in performing the test procedure. Neither IEC 62087–2011 nor ENERGY STAR v. 5.3 provides specific requirements with respect to LMDs. Consequently, DOE has developed proposed specifications for today's NOPR. To develop these, DOE researched existing test procedures and standards that provide LMD specifications. DOE has found that the VESA Flat Panel Display Measurements Standard v. 2 provides tolerances for LMDs. VESA specifies that the luminance must be within ± 5 percent and repeatability must be less than ± 0.5 percent of the luminance or the uncertainty introduced by any digitalization over a five minute period. DOE also researched available LMDs for testing to develop the following proposed requirements.

DOE is proposing, in section 3.1.3 (light measurement device) of appendix H to subpart B of 10 CFR part 430, that all LMDs have an accuracy of ± 2 percent (± 2 digits) of the digitally displayed value and repeatability within 0.4 percent (± 2 digits) value. DOE is also proposing that the LMD should have an acceptance angle of 3 degrees or less. To determine the precision of a measured number, the displayed value on the measuring device needs to be taken into consideration. The increment of the last significant digit is said to be the accuracy of the display and 2 digits is twice the interval. The overall tolerance of LMDs is found by taking (+/−) the absolute sum of 2 percent and 2 significant digits of the measured value.

DOE believes that these criteria are sufficiently stringent to ensure that measurements will be repeatable and accurate, without imposing burden on manufacturers by requiring overly precise measurement devices. However, DOE welcomes comments on the proposed LMD specifications. (See Issue 2 in section V.E ''Issues On Which DOE Seeks Comment'').

2. Test Room and Set-Up Criteria

DOE received comments from interested parties requesting that it clarify how to set up the TV for testing. Specifically, NRDC requested that DOE review the requirements in IEC 62087–2008 and urged DOE to provide sufficient clarity on preparing the TV before testing. (NRDC, No. 5 at p. 2) DOE has analyzed IEC 62087–2008 as NRDC requested and found that the requirements in IEC 62087–2008 are similar to those found in IEC 62087–2011. PG&E and California IOUs also requested that DOE require a standard test set-up that ensures the most robust results possible. (PG&E, No. 12 at p. 3; California IOUs, No. 9 at p. 3) DOE has analyzed both IEC 62087–2011 and IEC 62087–2008, and has evaluated other existing TV test procedures to develop proposals for creating dark room conditions, ambient temperature and humidity, THD, and signal source generation, with the goal of ensuring repeatable results. The proposals are discussed in detail in the following sections.

a. Dark Room Conditions

DOE is proposing that, if the lab technician elects to use a distance meter for luminance testing, it must make the measurements in dark room conditions, similar to the requirement in ENERGY STAR v. 5.3. DOE is proposing, in section 4.2 (dark room conditions) of appendix H to subpart B of 10 CFR part 430, language from the requirement in ENERGY STAR v. 5.3, which (with minor modification), states: ''All luminance testing shall be performed in dark room conditions. Display screen illuminance * * * as measured with the UUT in [o]ff [m]ode shall be less than or equal to 1.0 lux.''

b. Ambient Temperature and Humidity

DOE is proposing ambient conditions consistent with IEC 62087–2011 and ENERGY STAR v. 5.3, which both require that ambient temperature be 23 °C ± 5 °C. ENERGY STAR v. 5.3 further specifies that relative humidity must be between 10 and 80 percent, which DOE is also proposing to require in its test procedure. Because these are both widely accepted test methods, and each of the temperate and humidity ranges is quite large, these requirements should be reproducible across a wide range of test laboratories. These ambient condition requirements are being proposed in sections 4.3 (ambient temperature conditions) and 4.4 (ambient relative humidity conditions) of appendix H to subpart B of 10 CFR part 430.

c. Signal Source and Generation

In the 2010 RFI, DOE requested feedback from interested parties regarding the signal source as well as the input cable to be used when testing. 75 FR 54048, 54050. As discussed below, interested parties were generally in agreement that the input cable should be HDMI, if the TV has an HDMI input. If the TV does not have an HDMI input, DOE has proposed a list of alternative connections in the order in which they should be used to conduct testing, which can be found below. Interested parties were also in support of using a Blu-ray player as the signal source for testing.

Mitsubishi, Sony, LG, NRDC, Panasonic, CEA, CEC, PG&E, and California IOUs were all in support of DOE using HDMI as its preferred input cable. Mitsubishi recommended that DOE require an HDMI cable be used if the input exists and component cables be used if HDMI inputs do not exist. (Mitsubishi, No. 7 at p. 5) Sony similarly commented that a HDMI input cable should be the preferred input cable, and if it not available, the next highest resolution input should be used. (Sony, No. 8 at p. 3) LG supported using an HDMI input cable because it has a digital signal and other sources have calibration issues. (LG, No. 3 at p. 1) NRDC recommended that DOE use a HDMI input cable if the input is

[13] This similarity of results can be found in the Round Robin Test Program Final Report for: Television at the DOE Web site: *Appliance and Commercial Equipment Standards: Television Sets.* U.S. Department of Energy. August 2, 2011. <*http://www1.eere.energy.gov/buildings/appliance_standards/residential/tv_sets.html*>.

available. If not available, then a component input cable should be used. NRDC also stated that VGA connectors should not be allowed to serve as the means to input the content. (NRDC, No. 5 at p. 6) Panasonic agreed that a HDMI input cable should be used if available. (Panasonic, No. 6 at p. 6) CEA agreed that a HDMI input cable should be used if it is available, but stated that variation between different inputs is minor. (CEA, No. 13 at p. 7) CEA further commented that it is vital to allow various different input cables to be used because some TVs are produced with neither a HDMI input nor a component input. (CEA, No. 13 at p. 7) Ecos Consulting found in its previously cited report the effect of different input cables on the test results. Their report recommended that an HDMI input cable be used for testing because it produced similar results to a standardized signal generator unlike component and VGA inputs.[14]

As outlined above, comments from all interested parties agreed that an HDMI input should be the preferred input. Some interested parties also advocated that alternative inputs should be allowed if an HDMI input is not available. DOE acknowledges that all TVs may not be shipped with an HDMI input available, and therefore is proposing the following order for inputs: HDMI/DVI, VGA, component, S–Video, and finally composite. If none of these inputs are available, the highest resolution input must be used. DOE believes that by proposing an input format hierarchy, it will ensure consistency and repeatability between tests without imposing undue burden upon manufacturers. However, DOE welcomes comments on the purposed input formats hierarchy. (See issue 14 in section V.E ''Issues on Which DOE Seeks Comments'')

DOE also received comments on the signal source to be used for testing. NRDC commented that a signal should not be generated by a personal computer (PC). NRDC preferred that a standard method of generating signal be used, but did not specify what the preferred method should be. (NRDC, No. 5 at p. 6) Panasonic believes that the Blu-ray player is the most appropriate device to supply the IEC 62087–2008 dynamic broadcast-content video signal, which is the same as the IEC 62087–2011 dynamic broadcast-content video signal. (Panasonic, No. 6 at p. 6) CEC concurs with the recommendations made in the report done by Ecos Consulting regarding signal sources, which recommends a signal generator with an HDMI input connection. (CEC, No. 15 at p. 3) PG&E and California IOUs also cited the report done by Ecos Consulting, but commented that DOE should conduct additional testing on various size TVs with different display technologies to confirm the proper signal source. (PG&E, No. 12 at p. 3; California IOUs, No. 9 at p. 3) SHARP recommended that DOE not require a specific signal source like CEA–2037–2009. (SHARP, No. 14 at p. 7) SHARP commented that there should be no dependency on the nature of the source (Blu-ray player, computer, etc), as long as the decoder and signal are properly implemented according to existing and well-known standards. (SHARP, No. 14 at p. 7)

The IEC 62087–2011 dynamic broadcast-content video signal, which is discussed further in section III.E.3.a of this NOPR, is supplied in two formats for testing, DVD and Blu-ray. DOE acknowledges interested party comments recommending that a particular signal source should not be used but believes that establishing a specific signal source will increase repeatability and reproducibility. As some commenters requested, DOE is proposing to require testing using a Blu-ray player. The TV market is moving towards watching TV in high-definition, as evidenced by increased production of high definition TVs and broadcasting of high definition channels. Blu-ray players produce a 1080p image that yields far more detail than the 480p image provided by DVD; therefore, DOE is proposing that it be used for testing. DOE welcomes comments on the signal source and generation specifications proposed in this NOPR. (See Issue 3 in section V.E ''Issues On Which DOE Seeks Comment'').

E. Test Measurements

As previously mentioned, DOE is proposing a test procedure largely based on IEC 62087–2011, with some modifications to improve the repeatability as well as tailor the procedure to the U.S. market. DOE is proposing that the following test measurements be taken as described in the following sections.

1. Picture Settings to Test

In the 2010 RFI, DOE requested comment on testing the TV in multiple power consuming modes. For luminance testing, ENERGY STAR v. 5.3 requires that the TV be tested in two picture settings: home mode and retail mode. As stated earlier, DOE is proposing to replace the terms home mode and retail mode (as used in ENERGY STAR v. 5.3) with home picture setting and retail picture setting. This is to distinguish the luminance picture setting from the testing modes for energy consumption. IEC 62087–2011 does not reference luminance testing. Alternatively, for power testing, both IEC 62087–2011 and ENERGY STAR v. 5.3 require that TVs be tested only in the home picture setting. DOE received comments and is considering testing energy consumption in picture settings other than the home picture setting.

Numerous commenters informed DOE that only a limited number of consumers switch their TVs out of the home picture setting, and therefore DOE should only require testing in the home picture setting. Other interested parties suggested that DOE analyze all preset picture settings to determine the energy consumption of all possible picture settings. Mitsubishi commented that manufacturer statistics show that less than 5 percent of TV viewers ever utilize non-default display settings. (Mitsubishi, No. 7 at p. 2) PG&E and California IOUs stated that DOE should collect and analyze available technologies (e.g., LCD, plasma) in several selectable preset picture settings: the dimmest setting, home setting, and retail setting. (PG&E, No. 12 at p. 1; California IOUs, No. 9 at pp. 1–2) PG&E and California IOUs also urged DOE to develop the test procedure such that any preset picture setting may be measured using the procedure. (PG&E, No. 12 at p. 2; California IOUs, No. 9 at p. 2) Finally, they suggested that the DOE should obtain and analyze data on consumer home viewing habits. (PG&E, No. 12 at p. 2; California IOUs, No. 9 at p. 2) SHARP commented that because consumers do not adjust their TV settings and it is not possible to predict the popularity of each picture setting, multiple picture settings should not be tested. (SHARP, No. 14 at p. 4)

DOE also received comments desiring that only the home picture setting should be used for testing. SHARP stated that there are no reliable data on the popularity of modes that can be applied across the industry, and, therefore, the out-of-the-box setting remains the best predictor of actual power use. (SHARP, No. 14 at p. 3) Sony commented that there is little information regarding consumer preferences for preset picture settings. Sony's call center data indicates that more than 95 percent of returned sets remain in the home picture setting when received, while information

[14] Calwell, Chris, Mercier, Catherine, & Foster-Porter, Suzanne. Assessment of Options for Improving Energy Efficiency Test Procedures for Display. (Last accessed July 26, 2011). *http://www.efficientproducts.org/%5Creports%5Ctvs%5CEcos_Display%20Test%20Procedure%20Report_FINAL.pdf.*

obtained during CEC's rulemaking process suggests that consumers tend to use the home picture setting. (CEC, No. 15 at pp. 2–3 and Sony, No. 8 at p. 2) NRDC commented that to the extent a TV has a ''forced'' set up menu; the test should be performed on the TV as shipped after selecting the home picture setting in the menu. (NRDC, No. 5 at p. 3) CERC believes that the test procedure should focus on the energy consumption of TVs in the home picture setting due to the difference in room lighting and energy consumption of TVs in retail and home settings. (CERC, No. 10 at p. 3) CEA commented that DOE should not require testing of other preset viewing settings because it is time consuming and will not yield useful information because consumer viewing habits are unknown and preset viewing settings are not standard across manufacturers. (CEA, No. 13 at p. 5)

In this NOPR, DOE is proposing that luminance measurements be taken in both the home and retail picture settings, and that power measurements (for TVs without ABC enabled) only be taken in the home picture setting. As many interested parties commented, most consumers do not switch their TVs out of the picture setting in which they are shipped. Therefore, requiring power measurements in the retail picture setting or any other alternative picture settings may cause unnecessary burden on manufacturers by increasing testing time. A luminance measurement in both the home and retail picture setting must still be taken in order to generate a luminance ratio, which is utilized by other regulatory programs such as ENERGY STAR. However, DOE is also considering testing on mode energy consumption in picture settings other than the home picture setting. DOE is aware of some TVs that are equipped with remotes that have easy-to-access shortcuts that enable the user to switch from the home picture setting to other preset picture settings (sport, vivid, movie, etc.), without requiring that the user enter the main menu. Although interested parties commented that consumers do not switch between picture settings, DOE believes that if TV remotes are designed with shortcuts to switch between preset picture settings, more consumers may do so, either accidently or intentionally. For this reason, DOE is considering whether this should be taken into account in the test procedure. In particular, DOE is considering testing on mode energy consumption in some of these additional preset picture settings. Possible approaches could include testing in the highest and lowest energy consuming preset picture settings, while displaying the IEC 62087–20011 dynamic broadcast-content video signal, or the brightest and dimmest preset picture settings. An additional approach could include testing in all preset picture settings. DOE invites comments on testing in additional preset picture settings, particularly the balance between a representative and not overly burdensome test procedure. (See Issue 4 in section V.E ''Issues On Which DOE Seeks Comment'').

2. Testing Order

In today's NOPR, DOE is proposing to require that testing be conducted in the following order: luminance, on mode power, standby mode power, and off mode power tests. This is not consistent with the test procedure prescribed in ENERGY STAR v. 5.3, which specifies on mode tests be conducted prior to luminance tests. DOE is aware that some TVs are unable to operate in the retail picture setting once the TV has been switched into the home picture setting. Therefore, it is necessary to measure luminance in the retail picture setting before switching to the home picture setting to ensure that the retail picture setting luminance is captured. For this reason, DOE is proposing to perform luminance testing prior to on mode power testing in section 5.3.1 (luminance test) of appendix H to subpart B of 10 CFR part 430. DOE does not believe that this alternative testing order will increase the testing burden or cause any issues with test results, but will ensure that all TVs are adequately tested in each prescribed mode.

3. Luminance

Although IEC 62087–2011 does not include a luminance test, ENERGY STAR v. 5.3 requires a test of the screen luminance. The luminance test is included to ensure that TVs are not shipped in an overly dim picture setting in order to achieve a lower measured on mode power value, since under ENERGY STAR v. 5.3 TVs are tested in ''as shipped'' condition. In the 2010 RFI, DOE asked interested parties for comments on multiple facets of luminance testing. Specifically, DOE requested input on (a) whether testing luminance should be required, and (b) the different display patterns that can be used to adequately test luminance. 75 FR 54048, 54049. Many interested parties provided feedback regarding the need for luminance testing. Several interested parties supported luminance testing. NRDC stated that screen luminance is important to include in the test procedure because it often has a direct impact on TV on mode power use and future energy conservation standards might include these parameters in the rulemaking; thus, including a test for screen luminance would allow policy makers the ability to add luminance requirements to their standards. (NRDC, No. 5 at pp. 2–3) It further clarified that the luminance test method should include details on (a) the video signal being used; (b) the type of instrument and its precision; (c) the angle and location of the measurement points; and (d) the ambient lighting conditions, if necessary. (NRDC, No. 5 at p. 5) Finally, NRDC stated that it believes the DOE luminance testing could require: (a) Testing in ''as shipped'' conditions in home or retail picture settings; (b) ability to measure either a luminance ratio or a power ratio; and (c) TVs to be set at a specified luminance prior to measurement. (NRDC, No. 5 at pp. 3–4)

LG supported the ENERGY STAR luminance test method, which involves measuring the luminance while displaying the IEC 62087–2011 three bar video signal. This test is conducted twice, once while the TV is in the home picture setting and again when the TV is in the retail picture setting. After both measurements are taken, the ratio of the two luminance measures is calculated. LG believes that it is an acceptable and representative measure of luminance and provides consistency across state and federal programs. (LG, No. 3 at p. 1) SHARP does not support luminance testing, but asserts that, if DOE must define a luminance measurement procedure, it should follow the ENERGY STAR v. 4.1 (which remained unchanged in ENERGY STAR v. 5.3) test procedure in detail. (SHARP, No. 14 at p. 5) Similarly, Sony believes that the luminance requirement as defined by ENERGY STAR v. 5.3 is an unnecessary test, but finds the method itself provides a rather simple solution to a complex subject. (Sony, No. 8 at p. 2)

Alternatively, CEA and some manufacturers strongly opposed requiring a luminance measurement, with primary arguments including that default TV picture settings are not too dim, and DOE should not regulate a performance metric. CEA stated that a luminance requirement is unnecessary, premature and essentially not energy related. (CEA, No. 13 at p. 3) CEA also commented that any proposal to impose limits on luminance and/or tie luminance levels to power levels is speculative and a performance requirement should not be embedded within the test procedure as it may not be authorized by EPCA. (CEA, No. 13 at p. 4) Mitsubishi stated that DOE should not set standards that assure that

products meet a certain consumer utility. (Mitsubishi, No. 7 at p. 3) CEA noted that DOE should not include a luminance requirement, but if a luminance test is included it should mirror the test outlined in ENERGY STAR v. 4.1 (which, as noted above, remained unchanged in ENERGY STAR v. 5.3). (CEA, No. 13 at p. 4) According to CEA, data indicates that consumers maintain the default settings of the TVs, and, therefore, retail picture settings are not relevant to those consumer viewing habits. (CEA, No. 13 at p. 3) Sony also commented that, after thoroughly reviewing its call center data, it found no complaint of dim pictures, which was DOE's reasoning for including a luminance test. (Sony, No. 8 at p. 1) Sony commented that the test procedure should measure power and should not be a luminance test procedure. (Sony, No. 8 at p. 4) Mitsubishi commented that manufacturers will not produce TVs with dim home picture settings, because this would create poor reviews and high return rates. Mitsubishi further believes it is undesirable for manufacturers in this industry to sell a TV that is too dim because there are very tight margins. (Mitsubishi, No. 7 at p. 2) Panasonic believes that a regulation on luminance is not required since manufacturer competition discourages the shipping of dim TVs. (Panasonic, No. 6 at p. 1) Panasonic affirmed that the luminance testing in ENERGY STAR v. 5.3 was adopted as a solution to prevent only the remote possibility of the TVs being shipped too dim. (Panasonic, No. 6 at p. 2)

SHARP stated that DOE should not specify a luminance measurement and observed that the 65 percent home to retail ratio required by ENERGY STAR specifications may be encouraging TVs to have a brighter home picture setting than they otherwise would. SHARP did not believe that setting a lower bound for luminance would address the issue of shipping a TV too dim to decrease its power consumption for home mode testing. (SHARP, No. 14 at p. 3) SHARP wrote that IEC did not set luminance requirements because manufacturers will not ship overly dim TVs and risk product returns. Additionally, SHARP commented that there is no consensus on how to measure brightness levels, and setting a lower bound on home mode brightness is a performance requirement rather than an energy requirement. (SHARP, No. 14 at p. 2) SHARP further noted that if performance requirements force minimum luminance levels to be set too high, potential energy savings are lost. (SHARP, No. 14 at p. 3) Lastly, SHARP commented that any static video signal can be detected and circumvented, and therefore DOE should not implement a luminance measurement. (SHARP, No. 14 at p. 3) It stated that IEC 62087–2008 (which is the same as IEC 62087–2011) was not based on prescribed luminance levels for the following reasons:

(1) Consumers generally do not adjust their TVs from the default settings,

(2) Relatively few consumers have their TVs professionally calibrated,

(3) There is no consensus on how to measure perceived brightness levels,

(4) Perceived brightness is often related to contrast ratio as it is related to pure brightness,

(5) Some TV technologies have a non-linear relationship between power and brightness,

(6) Variation in consumer illuminance levels make the ideal brightness difficult to determine, and

(7) Humans have poor acuity for discerning absolute brightness levels, and there is no data that identifies the level of brightness to which the average person would adjust a television by hand. (SHARP, No. 14 at p. 2)

In this NOPR, DOE is proposing to include a luminance test as part of its test procedure. In recognition of interested parties' concerns, DOE clarifies that the proposed luminance test is included in the test procedure solely for the purpose of supporting the ENERGY STAR program; the Department is not proposing to include the luminance measurements in its final metrics for measuring the energy efficiency or consumption of TVs. Including a luminance test as part of the test procedure for TVs will allow other programs such as ENERGY STAR to utilize the results. The sections, below, describe the different aspects of this proposal, as well as comments from interested parties on these aspects.

a. Warm-Up and Stabilization

As mentioned in section III.E.2, above, DOE is proposing to require that luminance tests be conducted prior to on mode testing. Due to the change in luminance testing order (conducting testing in the retail picture setting prior to the home mode picture setting), DOE considered both warming-up the TV with respect to power and stabilizing the TV for luminance. However, in today's notice, DOE is proposing that the TV be warmed-up but not be stabilized prior to measuring display luminance.

IEC 62087–2011 and ENERGY STAR v. 5.3 both require that the TV be warmed-up prior to energy measurement but do not include a recommended or minimal time period. Rather, they state that energy measurements be taken ''after the TV has achieved a stable condition with respect to power consumption.'' With respect to luminance testing, ENERGY STAR v. 5.3 requires the three bar video signal be displayed for 10 minutes to stabilize a TV prior to conducting a measurement. DOE received comments from interested parties on the appropriate time required to warm-up and stabilize a TV prior to conducting testing. 75 FR 54048, 54051

Mitsubishi commented that measurements of power consumption should be taken after the TV has reached normal operating temperature. (Mitsubishi, No. 7 at p. 5) Mitsubishi further commented that warm-up times vary by model and it is difficult to identify a minimally sufficient warm-up time, but it is also unnecessary. It continued by adding that it is sufficient to require that before testing begins, the device under test has reached thermal equilibrium, and that the test procedure need not indicate a specific time but rather a minimum. (Mitsubishi, No. 7 at p. 6) PG&E and California IOUs stated that the warm-up time should be sufficient to reflect real-world conditions while also aiming not to be too long so as to become overly burdensome. (PG&E, No.12 at p. 3; California IOUs, No. 9 at p. 3) SHARP, Sony, Panasonic, and CEA recommended that DOE refer to the IEC 62087–2008 test procedure for warm-up periods. The warm-up periods remained unchanged in IEC 62087–2011. (SHARP, No 14 at p. 7; Sony, No. 8 at p. 3; Panasonic, No. 6 at p.7; CEA, No. 13 at p. 7)

DOE acknowledges all stakeholder comments and is proposing to incorporate language that the TV be warmed-up consistent with that in IEC 62087–2011, with the addition of a minimum warm-up period requirement. In this NOPR, DOE is proposing TVs be warmed-up using the IEC 62087–2011 dynamic broadcast-content video signal for at least one hour in section 5.2 (warm-up) of appendix H to subpart B of 10 CFR part 430. DOE conducted testing to determine if this warm-up was appropriate.[15] Although the power did not change drastically over the one hour for any of the TVs tested, DOE believes that because no interested party commented on the desire to reduce the duration, a one hour warm-up period was still appropriate. DOE will further propose that the TVs can be warmed-up for longer than one hour if the TV does

[15] The warm up period data can be found on the DOE Web site: *Appliance and Commercial Equipment Standards: Television Sets.* U.S. Department of Energy. August 2, 2011. *http://www1.eere.energy.gov/buildings/appliance_standards/residential/tv_sets.html.*

not reach a stable state with respect to power consumption within the one hour time period. DOE is defining a stable state as an average power measurement over the 10 minute test clip that varies by less than 2 percent on consecutive plays. DOE believes that by establishing a minimum warm-up period, the test results will be more consistent, because all TVs will be warmed up for an identical time period. Further, DOE testing indicates that the majority of TVs will stabilize within one hour. DOE also consulted with industry subject matter experts [16] who had similar findings.[17] Although DOE plans to specify that a one hour warm-up period be used, there is flexibility to utilize a longer warm-up period for the TV to reach a stable energy consuming state. For luminance stabilization, DOE is not proposing that the TV be stabilized prior to conducting luminance measurements, rather that luminance measurements be taken immediately upon displaying the three bar video signal. Luminance measurements are made immediately to prevent automatic image correction programs from revising the luminance of the observed test pattern.

DOE received a comment from Panasonic recommending that DOE adopt the luminance measurement test procedure in ENERGY STAR v. 5.3, which requires that luminance be measured immediately following the on mode test, ensuring that the TV is sufficiently stabilized with respect to power prior to conducting the luminance test. Panasonic also stated that it does not object to increasing the 10 minute stabilization periods if it is felt to be necessary. (Panasonic, No. 6 at p. 7) No other interested parties commented on the topic.

ENERGY STAR v. 5.3 requires that the TV display the three bar video signal for 10 minutes prior to conducting a luminance measurement. As part of today's NOPR, DOE is proposing to require that luminance measurements be taken immediately after displaying the IEC 62087–2011 dynamic broadcast-content video signal from the warm-up period in section 5.4.1 of appendix H to subpart B of 10 CFR part 430. DOE conducted extensive research to determine the appropriate stabilization period and has preliminarily determined that taking luminance measurements immediately after displaying the IEC 62087–2011 dynamic broadcast-content video signal is the most technology neutral method.[18] DOE's research also found that the luminance of some TV technologies drops as the same image remains on the screen and luminance with other TV technologies increases as the same image remains on the screen.[19] Taking an immediate measurement helps to mimic actual operating conditions, in which images are changing constantly.

Specifically, taking measurements according to this method ensures that TVs, particularly plasmas, do not enter into an automatic brightness limiting (ABL) state prior to luminance testing. ABL is a technology that is used on phosphor based TV screens (CRT and plasma) that is designed to limit the luminance of the screen to a level that will avoid damage to the phosphors. This type of protection is not necessary in LCD technology as high luminance levels cannot cause damage to the display elements. Measuring the luminance immediately after displaying the IEC 62087–2011 dynamic broadcast-content video signal, without allowing a substantial period of delay, will ensure that TVs do not require additional stabilization time while displaying the IEC 62087–2011 three bar video signal which would result in some TVs entering an ABL state. This method will promote more consistent testing across products. Taking measurements according to this method also ensures that TVs, particularly LCDs with cold cathode fluorescent lamp (CCFL) technology, have been stabilized. DOE welcomes comments on the stabilization and warm-up periods proposed in this NOPR. (See Issue 6 in section V.E ''Issues On Which DOE Seeks Comment'').

b. Method for Testing Luminance

As mentioned above, many TVs have multiple preset viewing settings. Again, the retail picture setting is typically used in showrooms, whereas the home picture setting is intended to be more suited for typical home viewing conditions. ENERGY STAR v. 5.3 uses a luminance ratio test that compares these two picture settings. However, DOE is aware of alternative methods for ensuring that the TV does not have an overly dim home picture setting such as power ratios and absolute luminance measurements, and therefore in the 2010 RFI, DOE requested feedback on testing by using luminance ratios, power ratios and absolute luminance. 75 FR 54048, 54049.

Many commenters believed that power cannot be measured to determine the brightness of the TV. Panasonic commented that the relationship between power and luminance is often non-linear and is highly variable between TV technologies, specifically in TVs with ''local dimming'' and ''power on demand''. Panasonic believes that this non-linear relationship makes a power ratio an unfair measurement of screen brightness. Panasonic believes that the measurement of the power would not result in the goal of determining whether a TV is ''too dim.'' (Panasonic, No. 6 at p. 2) Panasonic commented that though they recognized all of DOE's concerns pertaining to a luminance ratio, they support its inclusion in the test procedure. (Panasonic, No. 6 at p. 2) Mitsubishi commented that different display technologies have different luminance and power characteristics, and these two aspects of TVs should not be conflated. Mitsubishi also noted that luminance variation across the screen is unrelated to energy consumption. (Mitsubishi, No. 7 at p. 2) Mitsubishi also believes that measuring power rather than a luminance ratio does not satisfy the ''goal'' of preventing manufacturers from producing devices that are not useful in the home picture setting. (Mitsubishi, No. 7 at p. 3) Finally, Mitsubishi commented that some TV display technologies have a power consumption that correlates significantly with the content displayed rather than the display luminance. (Mitsubishi, No. 7 at p. 3) SHARP stated that a fixed luminance level is not prescribed for power measurements made with CEA–2037–2009 and IEC 62087–2008 (nor in IEC 62087–2011), and therefore DOE does not need to implement a luminance measurement. (SHARP, No. 14 at p. 3) Sony also does not support measuring power consumption at prescribed luminance levels or picture settings. Sony believes that picture settings are performance settings and are not directly tied to luminance. (Sony, No. 8 at p. 2)

CEC presented an alternative method for using power to ensure the TV is not shipped in an overly dim picture setting. CEC suggested that a power ratio be taken between home and retail

[16] Keith Jones, Managing Director, Australian Digital Testing and Bob Harrison, Principal Scientist, UK Government Market Transformation Programme Consumer Electronics and Information and Communication Technologies.

[17] The stabilization period can be seen to stabilize within one hour based on the data found in the Luminance Period document which can be found on the DOE Web site: *Appliance and Commercial Equipment Standards: Television Sets.* U.S. Department of Energy. August 2, 2011. *http://www1.eere.energy.gov/buildings/appliance_standards/residential/tv_sets.html.*

[18] The appropriate stabilization period and drop off in luminance compared to time can be seen in the Luminance Stabilization Period document found on the DOE Web site: *Appliance and Commercial Equipment Standards: Television Sets.* U.S. Department of Energy. August 2, 2011. *http://www1.eere.energy.gov/buildings/appliance_standards/residential/tv_sets.html.*

[19] *Id.*

picture settings. The home picture setting would be used for compliance when the ratio was closer to one, while a weighted result of home and retail picture settings power would be used as the power deviates from one. (CEC, No. 15 at p. 2) NRDC suggested that DOE improve the ENERGY STAR luminance test by establishing a minimum screen luminance for all presets in the set up menu. The method would require the lab technician to record the screen brightness that was measured prior to running the on mode power test with the IEC 62087–2008 dynamic broadcast-content video signal, which is the same as the IEC 62087–2011 dynamic broadcast-content video signal. (NRDC, No. 5 at p. 4) NRDC also urged DOE to ensure that all measurements for ratios should be made identically. (NRDC, No. 5 at p. 5)

SHARP also suggested an alternative method for ensuring that TVs are shipped in a picture setting that satisfies consumer viewing desires. SHARP commented that DOE should set a requirement based on a ''floor,'' which would be a fixed percentage of the power of the most consumptive setting, and recommends that the floor be 40 percent of the most power consuming setting. This approach will help ensure that home picture setting is not overly dim as well as cap the maximum power consumption of a TV regardless of the picture setting. (SHARP, No. 14 at p. 5) SHARP supports the maximum power ratio approach, given that the allowable home to retail picture settings power ratio is no more than 40 percent. SHARP believes that unlike the luminance ratio approach, which is a performance requirement, setting a threshold for reported power is part of the power measurement process. (SHARP, No. 14 at p. 3) P.R. China suggests implementing an efficiency ratio of the output power and input power that includes luminance in the nominator, multiplied by the screen size, and divided by the input power. (China, No. 16 at p. 3)

PG&E, California IOUs, and CEC requested a flexible test procedure with respect to luminance. PG&E and California IOUs recommended that the test procedure be designed so that policy-makers could consider luminance or power ratios between different preset picture settings. (PG&E, No. 12 at p. 2; California IOUs, No. 9 at p. 2) CEC urged DOE to adopt a test procedure which includes both power and luminance testing at a minimum picture setting and the retail picture setting, but provides enough flexibility that the policy makers can decide how these numbers are used to set standards. (CEC, No. 15 at p. 2)

Interested parties also offered comments discouraging the possible inclusion of an absolute luminance measurement. Panasonic believes that absolute luminance does not provide enough data to determine if the TV is providing a ''satisfactory consumer viewing.'' Panasonic noted that many TV calibrators and video post production engineers consider the contrast ratio to be more important than absolute luminance. (Panasonic, No. 6 at p. 2) Panasonic also commented that when measuring luminance, the method must provide accurate results across all technologies, which is much easier with a ratio than with absolute luminance measurements. (Panasonic, No. 6 at p. 2) Finally, Panasonic commented that using a relative ratio is more tolerant of non-calibrated luminance meters, measurement distances and angles and the measurement location because the error cancels out between the two measurements. (Panasonic, No. 6 at p. 3)

In this NOPR, DOE is proposing measuring luminance to allow the ENERGY STAR program to utilize the measurement in section 5.3.1 (luminance test) of appendix H to subpart B of 10 CFR part 430. As mentioned in section III.E.1 above, DOE is proposing to test the TV in home and retail picture settings. DOE is proposing to include a luminance ratio, as is done in ENERGY STAR v. 5.3. DOE believes that by taking a ratio, less error is introduced than if taking an absolute luminance measurement. Further, ratios have been used in many other TV efficiency measures. For example, ENERGY STAR v. 5.3 requires that home picture setting shall not be less than 65 percent of the peak luminance of the retail picture setting. The European Parliament requires a luminance ratio of at least 65 percent in the Commission Delegated Regulation (EU) No. 642/2009. Australia's government requires a 50 percent luminance ratio in AS/NZS 62087.2.2:201. Although DOE does not currently intend to include the luminance measurements in its final metrics for measuring energy efficiency or consumption, testing for a luminance ratio will allow DOE's TVs test procedure to support the requirements of the ENERGY STAR Program and allow other regulating bodies to include a luminance ratio in their test procedures. DOE invites comments on luminance testing and including a luminance ratio. (See Issue 5 in section V.E ''Issues On Which DOE Seeks Comment'').

c. Video Signals

To test luminance, ENERGY STAR v. 5.3 requires that a static video signal be displayed, and a measurement be taken using an LMD. In the 2010 RFI, DOE asked for comments on the use of two video signals: The IEC 62087–2008 three bar video signal, which is the same as the IEC 62087–2011 three bar video signal, and the Chinese TV test procedure's nine point video signal (hereafter referred to as the nine point video signal). 75 FR 54048, 54050. As mentioned, IEC 62087–2011 does not require luminance testing, whereas ENERGY STAR v. 5.3 requires that a single luminance measurement be taken while the TV is displaying the three bar video signal.

DOE believes that an ideal TV luminance video signal should represent actual broadcast content as closely as possible so that the measured luminance is an accurate reflection of the luminance produced under real-world operating conditions and is technology-neutral. DOE recognizes that it is possible that an ideal video signal may vary depending on the purpose for which it will be used. DOE envisions that the three bar luminance video signal proposed in today's NOPR would be used as part of a luminance ratio. The table below lists the various video signals that DOE is considering as well as their perceived advantages and disadvantages. It should be noted that a number of stakeholder comments appear to equate the number of white areas in the video signal with the number of measurements. DOE wishes to clarify that these are two separate issues (for example, the nine point video signal could be used to test at anywhere between one and nine points); the number of measurements and related test burden are discussed in a following section. Any of the following video signals could be measured at a single point or multiple points.

Three key features of plasma TV technology impact the brightness of white areas on their screens. These features, therefore, need to be taken into consideration in evaluating and selecting an appropriate technology-neutral video signal. Most plasma technology TVs limit brightness for very bright parts of the screen. As mentioned above, this feature called ABL is intended to protect the screen. Although the intention of ABL is to protect the screen, ABL functions differently across TVs. The protection is, however, generally based on the size of the bright area. For very small areas such as tiny spots seen on firework displays, ABL is likely to have little effect and the spots,

therefore, will be very bright. The larger the white area, the more ABL tends to be applied. The second type of protection is when a static picture is detected with bright (and maybe not so bright) areas. After several minutes of a static image the brightness may be decreased to try to eliminate phosphor image burn. The third protection mode operates when the whole screen is bright: To protect plasma drive circuits, the power, and thus also the luminance, tend to be limited. What is being observed is the image burning protection.

DOE recognizes that none of the video signals currently under consideration is ideal. Each has advantages and disadvantages which are described below. Until a markedly improved video signal is made available, DOE is not inclined to change the status quo. DOE understands that IEC is contemplating a pattern with a dynamic video signal which may have significant advantages. DOE supports IEC's development of this potentially improved pattern and would consider incorporating it in future TV test procedures.

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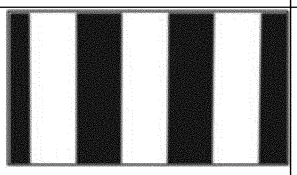
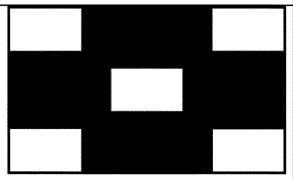
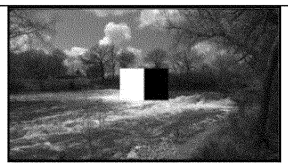
Video Signal	Sample Image	Average Picture Level (APL)	Usage	Advantages	Disadvantages
3-Bar Video Signal		**50%**	• Has been the default luminance video signal for the display industry • Initially developed for use with CRT displays	• Already referenced by ENERGY STAR, CEC, and IEC • Pattern widely available on DVD or Blu-ray test discs	• APL higher than typical TV program content • No reference point for vertical centering • Static pattern – not representative of dynamic video typical of TV program content • Results in quick automatic brightness limiting for plasmas due to the amount of white on the screen.
9-Point Video Signal		**17%**	• Used by Chinese TV test procedure and ISO/IEC test procedure for front projectors	• Results in less automatic brightness limiting for plasmas than the 3 bar, but nonetheless results in automatic brightness limiting for some. • White target is in the middle of screen	• As part of a luminance ratio may disproportionately disadvantage plasma TVs • APL lower than typical TV program content • Static pattern – not representative of dynamic video typical of TV program content • Results in automatic brightness limiting for some plasmas.
DOE 5-Point Video Signal		**34%**	• Developed by DOE as part of this proposed test procedure	• APL of typical broadcast content • White target is in the middle of screen • Similar in appearance to an available VESA 5-point pattern (RT01BN)	• Static pattern – not representative of dynamic video typical of TV program content • Results in automatic brightness limiting for some plasmas.
Dynamic Video Signal[20]		**~34%**	• In development by IEC	• APL of typical broadcast content • Not a static image – representative of dynamic video typical of TV program content • Pattern under consideration by IEC .	• Pattern not yet finalized by IEC

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DOE received comments on each of the video signals (see sections, below), described above as well as alternative suggestions for luminance testing, including the number of measurements to take while displaying a particular video signal. In response to commenters' concerns, DOE considered multiple video signals when developing its NOPR. DOE considered the three bar, the nine point, and a DOE developed dynamic video signal. In this NOPR, DOE is proposing to test luminance using the three bar video signal in section 5.3.1.2 (three bar video signal measurement) of appendix H to subpart B of 10 CFR part 430, but is also considering using the other two signals.

i. Three Bar Video Signal

The three bar video signal was developed by the IEC and published in the third edition of its TV broadcast transmission test procedure, IEC 60107–1997 Ed. 3.0 ''Methods of measurement on receivers for TV broadcast transmissions—Part 1: General considerations—Measurements at radio and video frequencies.'' The three bar video signal is found in IEC 62087–2011, and is used to measure luminance in ENERGY STAR v. 5.3. It is the most

[20] This pattern was created using the IEC 62087–2011 dynamic content video signal with black and white squares in the center of the screen as measurement points.

widely used video signal for measuring luminance. The three bar video signal produces three equidistant vertical white bars on a black background. The width of each of these bars is ⅙ of the nominal horizontal width of the picture. The three bar video signal has an APL of 50 percent. A higher APL can cause some plasma TVs to enter more quickly into a power limiting state to prevent screen burn-in caused by displaying a bright screen for an extended period of time.

In response to the 2010 RFI, many commenters expressed desire for DOE to use the three bar video signal for testing luminance. CERC, CEA, Sony, Mitsubishi, and Panasonic supported the use of the three bar video signal. (CERC, No. 10 at p. 3; CEA, No. 13 at p. 4; Sony, No. 8 at p. 2; Mitsubishi, No. 7 at p. 3; Panasonic, No. 6 at p. 3) Mitsubishi believes that the three bar video signal is adequate. (Mitsubishi, No. 7 at p. 4) Sony commented that the 3-bar test pattern is used in IEC and ENERGY STAR test procedures. Changing it will add complexity to an already complex subject. (Sony, No. 8 at p. 2) CEA stated that DOE should institute the ENERGY STAR test method of using the three-bar measurement procedure. (CEA, No. 13 at p. 4) Panasonic supports the use of the 3 bar pattern, as it is used by ENERGY STAR, CEA, CEC, and Australia. (Panasonic, No. 6 at p. 3)

Conversely, SHARP commented that the three bar video signal is ineffective for plasma TVs, giving an advantage to the technology and is not necessarily ''unpredictable for LED backlit TVs,'' as DOE stated in the 2010 RFI. (SHARP, No. 14 at p. 4)

Although DOE is proposing that luminance testing be conducted with the three bar video signal, DOE acknowledges that there are drawbacks associated with its use. The APL of the three bar video signal is 50 percent, which is greater than that of typical broadcast content. The three bar video signal also does not have a reference point to vertically center the luminance meter readings which requires additional time to establish where the measurement should be taken. Another drawback to the three bar video signal is a static video signal which is not representative of typical TV program content. The final disadvantage to the three bar video signal is that it results in a quick ABL for plasma TVs due to the amount of white space on the screen. Although, the three bar video signal has disadvantages, DOE is currently unaware of a truly technology neutral video signal that isn't affected by the type of TV technology. Video signals can have differing affects on TV technologies resulting in higher power consumption in some technologies and lower power consumption in other technologies. Because the three bar video signal is the current industry standard, it is used as a basis for comparison for the other video signals considered in the sections below.

ii. Nine Point Video Signal

The nine point video signal is used in the Chinese TV test procedure ICS 27.010. The video signal was developed to measure variations in luminance across the screen and account for local dimming. This video signal consists of nine white rectangular boxes symmetrically arranged in a three by three grid. The nine point video signal is also a static video signal which does not improve upon the current three bar video signal and can also result in some ABL for plasma TVs. The average APL for the nine point video signal is 17 percent which is lower than typical broadcast content. (P.R. China, No. 16 at p. 3) Because the nine point video signal has a lower APL than the three bar video signal, it alters the luminance ratio between home and retail picture settings for some TVs which would force policy makers to alter their respective luminance ratio requirements. DOE found that at least four different plasma TVs, which would have met ENERGY STAR requirements for luminance ratio with the three bar video signal, had a ratio below 65 percent when displaying the nine point video signal.

Panasonic discouraged DOE from using the nine point video signal and Digital Video Essential (DVE) window (a VESA industry video signal) because Panasonic believes these patterns do not prevent some TVs from power limiting; therefore they are not technology neutral. Panasonic did not provide any comment on how the video signals impact the TV's power limiting. (Panasonic, No. 6 at p. 4)

Alternatively, P.R. China recommended that DOE utilize the nine point video signal because the APL is 17 percent, it is technology neutral, and it accounts for non-uniform screen luminance. (P.R. China, No. 16 at p. 3)

DOE conducted various tests utilizing the nine point video signal. After interpreting data, the absolute luminance values obtained while using the DOE nine point video signal were generally higher in the retail picture setting and lower in the home picture setting than those obtained while using the three bar video signal, particularly in plasma TVs. DOE believes these results can be attributed to the lower APL of the nine point video signal, which prevents the TV from quickly entering ABL. This video signal might than disproportionately disadvantage plasma TVs. DOE also determined that changing the video signal will also impact the luminance ratio. Due to the change in absolute luminance values obtained while using the DOE nine point video signal, luminance ratios generally decreased for plasma TVs when compared to displaying the three bar video signal. DOE did not find any other major trends in size or brand for the TVs in which the ratio differed when using the nine point video signal as opposed to the three bar video signal. Due to the reasons stated above, DOE has determined not to propose utilizing the nine point video signal in this NOPR.

iii. DOE Five Point Video Signal

As mentioned above, DOE developed a five point video signal that has an APL identical to typical consumer broadcast content (34 percent). This video signal is based largely on the VESA five point video signal and consists of five white rectangular boxes arranged with one box in the center of the screen and one box in each corner.

Upon testing, DOE found that the absolute luminance values obtained while using the DOE five point video signal were generally lower than those obtained while using the three bar video signal. DOE believes these results are due to the fact that the five measurements took into account the perimeter of the screen which is typically dimmer than the center. Similar to the nine point and the VESA five point video signal, this can also be attributed to the location of the measurements taken, as the center of the screen is typically brighter than the edges. With testing, DOE determined that this video signal also displayed some ABL for some plasma TVs regardless of the fact that the APL is 34 percent. DOE did not find any major trends in size or brand for the TVs in which the ratio differed when using the DOE five point video signal as opposed to the three bar video signal other than changes in the luminance ratio for some TVs.

iv. DOE Dynamic Video Signal

Finally, DOE is interested in the development of a video signal that it believes may be more representative of actual consumer use, and may be more technology neutral. A technology neutral video signal was requested by numerous interested parties in response to DOE's 2010 RFI.

Some interested parties expressed a general desire for a technology neutral video signal or one that has an APL more similar to the IEC 62087–2008 dynamic broadcast-content video signal, which is the same as the IEC 62087–2011 dynamic broadcast-content video signal. PG&E and California IOUs encouraged DOE to develop a video signal that has an APL that is more similar to the IEC 62087–2008 dynamic broadcast-content video signal than the three bar video signal. This will help ensure that the luminance measurements are more reflective of actual TV usage. (PG&E, No. 12 at p. 2; California IOUs, No. 9 at p. 2) PG&E and the California IOUs also commented that the video signal should not favor one type of display technology over another. (PG&E, No. 12 at p. 2; California IOUs, No. 9 at p. 2) Panasonic agreed that the goal of a technology neutral video signal is certainly appropriate, though they feel that such a pattern has been elusive. (Panasonic, No. 6 at p. 3) NRDC encourages DOE to track the IEC development effort that is in progress, because IEC may be considering a potentially more technology neutral video signal including the nine point video signal used in China. (NRDC, No. 5 at p. 4) Finally, CEC supported DOE's investigation to identify a suitable video signal and recommends one that has an APL close to that of the IEC 62087–2008 dynamic broadcast-content video signal. (CEC, No. 15 at p. 2) P. R. China agrees that an alternative video signal with an APL more similar to the IEC 62087–2008 dynamic broadcast-content video signal should be developed. (P.R. China, No. 16 at p. 3) P.R. China suggests that TVs be adjusted using the ''8-gray scale mode'' and then be tested using the nine point video signal. (P.R. China, No. 16 at p. 3)

Panasonic also suggested alternative language found in the EuP 642/2009 [21] to conduct luminance testing. The EuP 642/2009 allows for different video signals for various TV technologies and only specifies that the video signal must be a ''full screen,'' which does not exceed the APL point where power limiting occurs. (Panasonic, No. 6 at p. 3) Panasonic commented that the European Union recognizes that each technology has a different, non-linear methodology for determining the brightness of individual images and therefore has prescribed different video signals for various technologies to meet the criteria of having a video signal that is not ''power limiting'' or dimming the screen as more pixels are required to be illuminated. Panasonic believes that both of these methods are also valid approaches of measuring luminance. (Panasonic, No. 6 at p. 3)

Alternatively, Mitsubishi commented that the APL is irrelevant to the goal of measuring luminance, which is to determine if the home picture setting luminance is overly dim. (Mitsubishi, No. 7 at p. 3)

To address interested party comments, DOE's subject matter experts [22] have recommended development of a video signal that simulates the apparent brightness of a picture as well as an APL similar to the IEC 62087–2011 dynamic broadcast-content video signal. The proposed video signal would consist of a black rectangle (with an APL of zero percent) and a white rectangle (with an APL of 100 percent) placed at the center of the IEC 62087–2008 dynamic broadcast-content video signal. These rectangles will maintain the video signal's APL at approximately 34 percent, which is similar to typical broadcast content. Each rectangle would be approximately 1×1 inch for a 26 inch TV. The purpose of the small size of the rectangles is to minimize the overall impact they have on the APL of the video signal but allow for a white section to measure the luminance. Also, to help ensure that the TV does not detect the squares as stationary objects, the squares will alternate places with each other every minute.

DOE hopes that this video signal will not unfairly benefit any specific technology, because it will simulate the state that the TV enters when displaying the IEC 62087–2011 dynamic broadcast-content video signal. This video signal may also prevent the TV from APL, because it is a dynamic video signal which neither the three bar nor nine point video signal are capable of preventing.

In summary, DOE understands the issues associated with the three bar video signal as well as all static video signals, but is utilizing the three bar video signal as the tentative default video signal for this NOPR while it continues to investigate other video signals and receive comments about them. Although DOE is proposing to require the three bar video signal, it would appreciate any comments on measuring luminance while displaying either the nine point or dynamic video signal that DOE also considered for incorporation in this rulemaking. (See Issue 7 in section V.E ''Issues On Which DOE Seeks Comment'').

d. Number of Luminance Measurements

In addition to the particular video signal displayed during luminance testing, the number of measurements and how those measurements are taken is important. In the 2010 RFI, DOE asked for comments on a nine point test measurement versus a single point test measurement. 75 FR 54048, 54050. Given the interested party feedback and additional testing discussed below, DOE is proposing to only require a single point luminance measurement.

In response to the 2010 RFI, many commenters expressed desire for DOE to only require one luminance measurement if a luminance measurement is required. Mitsubishi stated that the variation of luminance across the screen, which they believe is the purpose of measuring multiple points while displaying the nine point video signal, does not relate to the goal of ensuring that TVs do not have a home picture setting that is overly dim. Mitsubishi added that, for this reason, taking nine measurements using the nine point video signal adds unnecessary burden. (Mitsubishi, No. 7 at p. 4) Sony believes that using a video signal other than the three bar video signal and measuring multiple points will add complexity to an already complex subject. (Sony, No. 8 at p. 2) Panasonic commented that the nine point video signal offers no benefit over the three bar video signal, noting that a nine points measurement requires more time, is more difficult to perform, and is less repeatable. (Panasonic, No. 6 at p. 3) Sony similarly stated that manufacturers in China suggested that measuring luminance while utilizing the nine point video signal is lengthy and complex when measuring multiple points, and it does not provide more meaningful energy information than measuring a single point, though Sony did not explicitly state which Chinese manufacturers provided this comment. (Sony, No. 8 at p. 2) CEA also strongly opposed replacing the single point luminance measurement with the nine point video signal measurement, because taking nine measurements adds burden without giving more meaningful results. (CEA, No. 13 at p. 5) SHARP believes that a single point measurement is adequate for a ratio test. SHARP added that the Chinese test procedure uses a nine point video signal since it outputs an absolute luminance.

[21] Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for televisions *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:191:0042:0052:EN:PDF*>.

[22] Keith Jones, Managing Director, Australian Digital Testing and Bob Harrison, Principal Scientist, U.K. Government Market Transformation Programme ICT and CE products.

(SHARP, No. 14 at p. 4) SHARP commented that a nine point video signal measurement is much more expensive than a single, centered measurement. (SHARP, No. 14 at p. 4)

Other commenters urged DOE to adopt a luminance test that required multiple measurements, rather than a single measurement as currently required in ENERGY STAR v. 5.3. PG&E and California IOUs recommended DOE collect and analyze data using multiple point video signals to account for variations of luminance levels on different areas of a screen. (PG&E, No. 12 at p. 2; California IOUs, No. 9 at p. 2) PG&E and California IOUs acknowledged that adding a multiple measurement video signal will add test variation; however, they believe that luminance measurements from multiple points may be needed. (PG&E, No. 12 at p. 2; California IOUs, No. 9 at p. 2) NRDC did not specify a particular video signal to be used, but they prefer a method that requires multiple measurements rather than a single measurement. (NRDC, No. 5 at p. 4)

DOE conducted testing with the nine point video signal in order to determine the drawbacks and benefits of measuring luminance at multiple locations compared to measuring at only one point. Testing using this video signal was conducted using two separate methods: (1) Perpendicularly realigning the LMD to the center of each of the nine white squares (hereinafter referred to as the DOE nine point method); and (2) aligning the LMD perpendicularly with the center white square, maintaining the LMD fixed position, and angling the meter to measure eight off-axis white squares (hereinafter referred to as the Chinese nine point method). A distance luminance measurement is required to test off-axis measurements, but both a distance and contact meter can be used to take the perpendicular measurements. These nine measurements can be averaged to arrive at the overall screen luminance, ensuring that the brightness across the entire screen is accounted for in the measurement. Although the results for individual points varied across the screen when measuring luminance at multiple locations, DOE notes that measuring the additional locations would not impact the luminance ratio as the ratio would remain similar between TVs. DOE found that each of the individual measurement points across the TV screen maintained a similar ratio in the home and retail picture setting. DOE therefore believes that its proposed method of measuring luminance at a single location is sufficient for this test procedure. DOE's test results show that the ratio from the average of the nine locations and only the central location are exactly the same on all but one TV tested which had ratios that were within three percent.[23] Because luminance is calculated as a ratio, multiple location measurements serve to decrease the measurement accuracy and repeatability of measurement.

In summary, DOE is proposing that only one luminance measurement be taken in each home and retail picture setting in section 5.3.1.2 (three bar video signal measurement) of appendix H to subpart B of 10 CFR part 430. Taking multiple measurements, specifically with a distance meter, greatly increases the test burden and this burden outweighs the potential benefits of measuring multiple locations around the screen. Measuring only one location will also harmonize the DOE test procedure with other TV test procedures that manufacturers currently use to evaluate products. Although DOE is proposing to only require one luminance measurement per picture setting, DOE is seeking comments on taking a single measurement versus multiple measurements when testing for luminance, along with any testing data that supports or refutes DOE's proposed method.

e. Measurement Distances and Angles for Luminance Testing

In the 2010 RFI, DOE considered requiring that luminance measurements be taken at various distances and angles, rather than perpendicular to the center of the screen as required by ENERGY STAR v. 5.3. 75 FR 54048, 54050. However, after further investigation and input from interested parties, DOE is proposing that luminance measurements be taken perpendicular to the center of the screen, similar to the approach in the ENERGY STAR test procedure.

PG&E and California IOUs believe that the angle needs to be specifically defined and that a perpendicular angle may be appropriate; they also recommend that DOE acquire test results using different angles to inform the decision. (PG&E, No. 12 at p. 2; California IOUs, No. 9 at p. 2) Sony questioned the need to measure at angles and the benefits it provides in a test procedure, stating that the optimal distances to take luminance measurements are described in the LMD specifications. (Sony, No. 8 at p. 2) Similarly, Panasonic recommended that a single luminance measurement be taken perpendicular to the center of the screen. (Panasonic, No. 6 at p. 4) They believe that the contrast will vary with the room ambient light and the viewing angles. (Panasonic, No. 6 at p. 2) CEA also stated that the measurement distances and angles are not as important as making the measurements in a consistent manner. (CEA, No. 13 at p. 5) P.R. China measures luminance from a distance of three times the height of a high-definition TV screen and four times the height of a standard display TV screen because it simulates consumer viewing conditions. (P.R. China, No. 16 at p. 4) Finally, SHARP commented that luminance measurements at various distances and angles would only be appropriate if absolute luminance measurements were the goal. (SHARP, No. 14 at p. 4) SHARP also commented that a perpendicular measurement is adequate, if a luminance measurement is required. (SHARP, No. 14 at p. 4) SHARP stated that the correct distance for the measurement is dictated by the measurement tool, rather than the TV. (SHARP, No. 14 at p. 4)

Taking nine perpendicular measurements using a distance measure greatly increases testing burden as it requires that the meter be aligned nine times, once for the measurement of each white square. The Chinese nine point method also increased burden as it requires nine measurements rather than a single one. Although the luminance meter only needs to be positioned once, the additional off-angle measurements still increase the burden of the test method. In addition, the Chinese nine point method eliminates the ability to use a contact LMD.

As stated, above, DOE is proposing that luminance measurements be taken perpendicular to the center of the screen in section 5.3.1.1 (LMD setup) of appendix H to subpart B of 10 CFR part 430. DOE believes that measuring multiple locations on off-axis angles will add unnecessary variation to measurements made, will likely reduce the repeatability of the test and increase testing time. DOE is also proposing that the distance for which these measurements are taken are in accordance to the set specifications for the luminance measurement device, which can be found in III.D.1.c.ii of this NOPR.

[23] The luminance ratio data indicates that the ratio from any one particular location (regardless of location) is similar between home and retail settings. This data can be found on the DOE Web site: *Appliance and Commercial Equipment Standards: Television Sets.* U.S. Department of Energy. August 2, 2011. <*http://www1.eere.energy.gov/buildings/appliance_standards/residential/tv_sets.html*>.

4. On Mode

DOE is proposing to use the IEC 62087–2011 on mode test procedure. This test procedure displays the widely accepted IEC 62087–2011 dynamic broadcast-content video signal while the TV is in the on mode. Consistent with ENERGY STAR v. 5.3, DOE is considering testing on mode differently depending on whether ABC is enabled or disabled when the TV is shipped. If the TV is shipped with ABC enabled by default, the TV would be tested at multiple room illuminance levels, and if the TV is without ABC enabled by default, it would only be tested in the home picture setting. However, DOE wishes to continue to encourage manufacturers to ship TVs with ABC enabled. Although DOE is proposing to measure on mode without being connected to the internet, DOE is also interested in receiving feedback on potentially measuring on mode while the TV is connected to the internet. See section 11 of this NOPR.

a. IEC 62087–2011 Dynamic Broadcast-Content Video Signal

IEC 62087–2011 and ENERGY STAR v. 5.3 both require the use of the IEC 62087 dynamic broadcast-content video signal for on mode testing, which is the same in both the 2008 and 2011 versions of the test procedure. This video signal displays a variety of clips that have an average APL equivalent to typical broadcast content. DOE received a comment from NRDC supporting the use of the IEC 62087–2008 dynamic broadcast-content video signal. (NRDC, No. 5 at p. 2) Although no other interested party explicitly stated that the IEC 62087–2011 dynamic broadcast-content video signal should be incorporated, no interested party opposed the use of the video signal. Moreover, a number of parties suggested that the clip should be the basis for any 3D test procedure, affirming its wide acceptance. In this NOPR, DOE is proposing that the IEC 62087–2011 dynamic broadcast-content video signal be used to measure on mode energy consumption in 2D mode on all TVs.

b. Testing of Television Sets Shipped With Automatic Brightness Control Enabled

ABC is a power saving feature in which the TV automatically adjusts the screen luminance to account for the ambient lighting conditions (room illuminance). IEC 62087–2011 and ENERGY STAR v. 5.3 require TVs with ABC enabled by default to be tested differently than those without ABC enabled by default. DOE requested comment on the method for testing TVs with ABC enabled by default, as well as which room illuminance levels are most appropriate for testing. 75 FR 54048, 54050.

Interested parties were generally in support of DOE adopting a test procedure for TVs with ABC enabled by default. PG&E and California IOUs commented that appropriate implementation of an ABC feature for TVs could result in significant energy savings. (PG&E, No. 12 at p. 2; California IOUs, No. 9 at p. 2) PG&E and California IOUs urged DOE to adopt a repeatable and representative method for measuring energy consumption of TVs with ABC enabled by default, stating that this should be a key area of focus for DOE. (PG&E, No. 12 at pp. 2–3; California IOUs, No. 9 at pp. 2–3) PG&E and California IOUs have observed that the on mode power consumption reported to EPA drops by an average of 24 percent when testing with the ABC feature enabled. They obtained this data by comparing 18 specific TV models that did not have the ABC feature enabled on the August 2010 EPA product list, but did have it enabled on the September 2010 list. (PG&E, No. 12 at p. 3; California IOUs, No. 9 at p. 3) NRDC also supported the inclusion of a method to test TVs with ABC enabled by default, stating that when designed properly, the ABC feature can provide low cost means of delivering significant energy savings. (NRDC, No. 5 at p. 5) NRDC further commented that many TVs have ABC as a means to comply with the new, more stringent ENERGY STAR 4.1 specifications as well as standards in California and elsewhere that are also likely to be effective soon. (NRDC, No. 5 at p. 5) Sony commented that the IEC 62087–2008 and ENERGY STAR v. 4.1 use the proper method to measure ABC energy consumption, and in the absence of a better method, DOE should adopt the same method. (Sony, No. 8 at pp. 2–3) This same method is used in IEC 62087–2011 and ENERGY STAR v. 4.3. SHARP believes that ABC scaling factors should continue to encourage adoption of a default-on ABC feature. (SHARP, No. 14 at p. 6) Panasonic commented that due to tremendous variability between TV manufacturers and individual models, it is difficult to measure the performance of the ABC features of TVs. (Panasonic, No. 6 at p. 5) Finally, CEA informed DOE that it will consider changes to ABC testing in the next revision of CEA–2037–2009 and will propose any change to DOE. (CEA, No. 13 at p. 6)

DOE agrees with the interested parties that are in support of incorporating TVs with ABC enabled by default in a test procedure. Although some interested parties disagree with the current method of measuring ABC energy savings, the majority of them agreed that testing TVs with ABC enabled by default was appropriate. DOE therefore is proposing to incorporate a test procedure for TVs with ABC enabled by default in section 5.4 (on mode test for TVs without ABC enabled by default) of appendix H to subpart B of 10 CFR part 430. The sections below provide details relating to room illuminance levels and the method for creating test room illuminance for purposes of measuring energy consumption of TVs enabled with ABC.

i. Test Room Illuminance Levels and Associated Television Luminance Levels

ENERGY STAR v. 5.3 and IEC 62087–2011 require that ABC energy consumption be measured at two test room illuminance levels, 0 lux and greater than 300 lux. As mentioned in the 2010 RFI, a 2009 study conducted by Ecos Consulting discovered that ABC is often implemented in a manner that may not take full advantage of the potential energy savings.[24] In particular, if implemented incorrectly, ABC may achieve significant energy savings at the expense of TV picture quality, reducing the likelihood that users will actually enable the feature and achieve the claimed energy savings. The study showed that some TVs reduce the brightness of their displays at 0 lux, and then increase the brightness significantly at room illuminance levels only slightly above 0 lux. Since both IEC 62087–2011 and ENERGY STAR v. 5.3 only measure energy consumption at the mentioned two luminance levels, the TV seems to consume less energy than it does in use, causing results that are not representative of actual use. DOE also performed testing with respect to this issue and rarely observed any kind of gradual change in screen luminance in response to changes in room illuminance.[25]

DOE conducted testing in mid-2011 on multiple TVs representing various manufacturers, display technologies, and screen sizes to understand how TV

[24] Calwell, Chris, Mercier, Catherine, & Foster-Porter, Suzanne. Assessment of Options for Improving Energy Efficiency Test Procedures for Display. *http://www.efficientproducts.org/%5Creports%5Ctvs%5CEcos_Display%20Test%20Procedure%20Report_FINAL.pdf.*

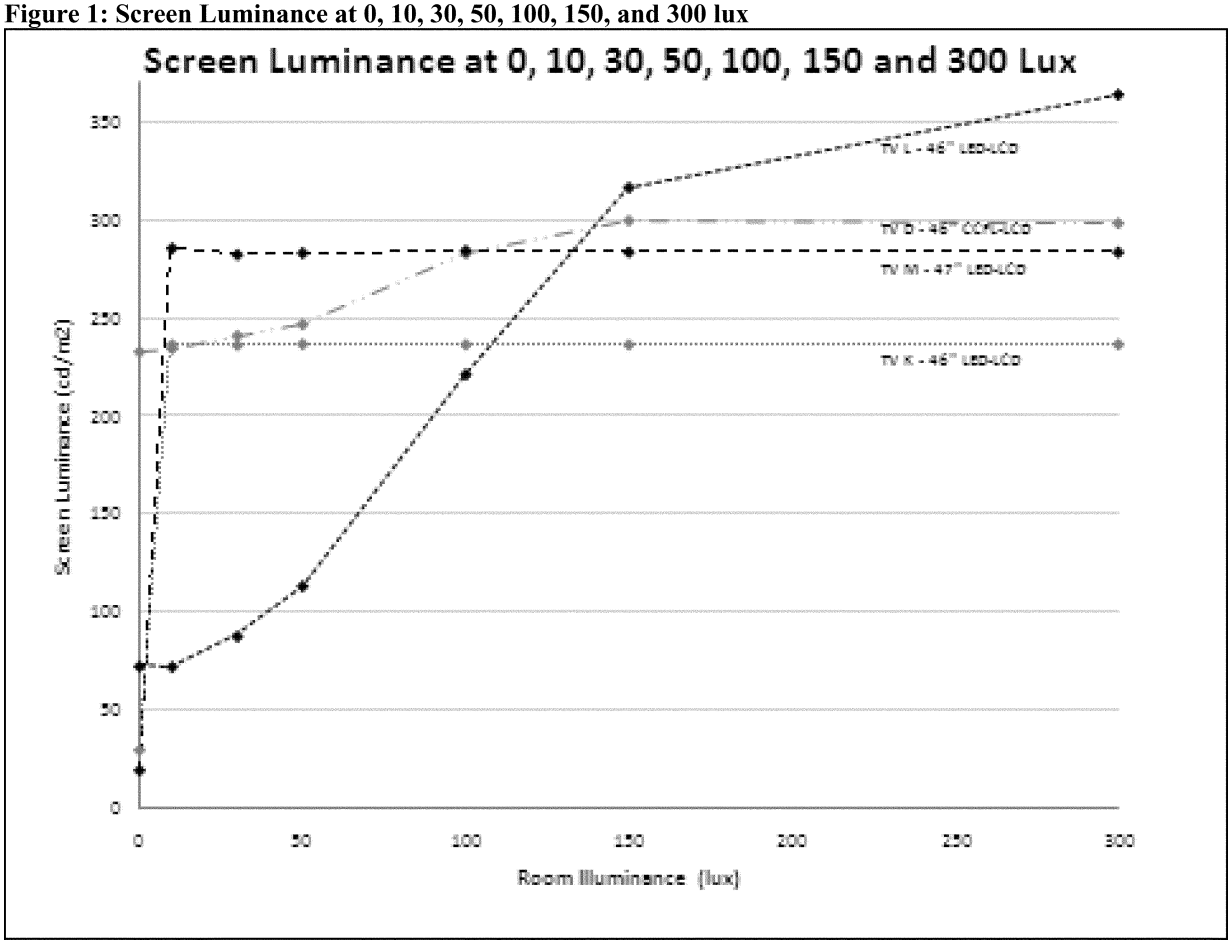
[25] The energy consumption at different illuminance levels while ABC is enabled can be found on the DOE Web site: *Appliance and Commercial Equipment Standards: Television Sets.* U.S. Department of Energy. August 2, 2011. *http://www1.eere.energy.gov/buildings/appliance_standards/residential/tv_sets.html.*

luminance varies with changes in room illuminance when ABC is enabled. These measurements largely confirm those recently conducted by the Collaborative Labeling and Appliance Standards Program (CLASP [26]), revealing that some TVs increase their screen luminance in a steady, continuous fashion as room illuminance increases (models D and L in 1 below).

DOE's testing shows that other TVs with ABC operate in a more binary fashion (models K and M in 1 below), holding luminance largely constant until room illuminance becomes quite low, and then dropping their luminance dramatically. This behavior is likely a consequence of the way ENERGY STAR currently provides an energy savings credit to TVs with ABC enabled by default, since ENERGY STAR currently only measures at 0 and 300 lux, and not at any intermediate points.

Sample data from DOE's testing are shown in 1. DOE has provided the full data set for this testing on its Web site.[27]

Figure 1: Screen Luminance at 0, 10, 30, 50, 100, 150, and 300 lux



DOE has also determined that a significant number of TVs that currently implement ABC do so in a way that yields unusually low screen luminance values (less than 50 nits) when room illuminance is at 10 lux or less. Display experts recommend a minimum luminance for dark room viewing conditions of approximately 80 to 137 nits.[28] Very low luminance levels help to reduce energy consumption, but may yield a display that is so dim that users would want to disable ABC or modify room lighting conditions in order to cause the display to operate at a higher luminance level. In either case, much of the desired energy savings from ABC operation would be lost.

As a result, DOE is seeking comment from stakeholders regarding whether there should be a limit to the reduction in display luminance achieved from ABC, and how a minimally acceptable display luminance value should be established. DOE also received a number of comments on the appropriate room illuminance levels at which to conduct testing.

CEC, PG&E and California IOUs encouraged DOE to continue to research room illuminance conditions that are representative of consumer homes. CEC supports improvements to ABC testing, and believes that more appropriate lighting levels can be derived from Illuminating Engineering Society of

[26] Jones, Keith, *Analysis of Television Luminance and Power Consumption,* CLASP, August 2011, *http://www.clasponline.org/en/ResourcesTools/Resources/StandardsLabelingResourceLibrary/2011/Analysis-of-tv-luminance-and-power-consumption.*

[27] The energy consumption comparison when ABC is on and off can be found on the DOE Web site: *Appliance and Commercial Equipment Standards: Television Sets.* U.S. Department of Energy. August 2, 2011. *http://www1.eere.energy.gov/buildings/appliance_standards/residential/tv_sets.html.*

[28] The minimum luminance to which CNET calibrates televisions for optimal viewing in a dark room is 137 nits. See *http://reviews.cnet.com/how-we-test/tv/.* The Imaging Science Foundation (ISF) recommends a similar minimum luminance for dark room viewing conditions. Televisions with an ISF Expert display mode tested by DOE operated at a minimum luminance in that mode of 100 to 130 nits. Televisions with a THX display mode tested by DOE operated a minimum luminance in that mode of 80 to 95 nits.

North America (IESNA) studies. (CEC, No. 15 at p. 3) PG&E and California IOUs urged DOE to collect and analyze luminance and power data with and without ABC enabled with a range of room illuminance levels typical of consumer viewing conditions. (PG&E, No. 12 at p. 3; California IOUs, No. 9 at p. 3)

Although some manufactures suggested that 0 lux should be changed, manufacturers were generally opposed to altering the room illuminance levels at which the TV is tested. Mitsubishi believes that measuring power at two levels of illuminance and assuming a linear relationship between the values is an approximation at best. (Mitsubishi, No. 7 at p. 5) They continued by adding that measuring at four illuminance points (*e.g.* 0, 10, 100, and 200 lux) doubles the testing burden on the lab making the measurement and does not ensure a linear relationship between any of the two points or necessarily make the power consumption approximation significantly better. (Mitsubishi, No. 7 at p. 5) NRDC stated that DOE should require testing at low, medium and high room light levels, all at least 100 lux or brighter, to better represent actual viewing conditions. (NRDC, No. 5 at p. 5) Further, NRDC asserted that the test should require the lab technician to report the power levels, at different luminance levels, and leave it to the policy maker to determine the weight at each level. The test procedure should also require testing with ABC off. (NRDC, No. 5 at p. 5) CEA advised against changing the ENERGY STAR specification, as testing at additional luminance levels will not create a more repeatable and representative test method without further testing. (CEA, No. 13 at p. 6) CEA recommends the use of ENERGY STAR's ABC test, but changing ''300 lux or greater'' to ''300 lux'' with a reasonable tolerance limit. (CEA, No. 13 at p. 6) Additionally, Panasonic noted that if absolute luminance measurements are required at various levels other than 0 lux and greater than 300 lux, it will be difficult to develop a test method that ensures accurate and repeatable results across labs. (Panasonic, No. 6 at pp. 5–6) Sony believes that accurately capturing light conditions and energy savings associated with TVs equipped with ABC is difficult. Illuminance meters must be placed in the exact same position and orientation of the light sensor of the TV, in order to properly create the desired illuminance which varies from home to home and from test lab to test lab. Sony stated that the lighting conditions are outside of the scope of the test procedure. (Sony, No. 8 at p. 3)

Alternatively, SHARP recommended that, at a minimum, the low light condition be increased somewhat above 0 lux, but to determine an appropriate value, or if additional levels are required, more data collection and study is required. (SHARP, No. 14 at p. 5) SHARP also supported the high illuminance condition being at precisely 300 lux, allowing for some reasonable tolerance in the measurement condition. (SHARP, No. 14 at p. 5)

To determine the appropriate illuminance levels required during on mode testing for those TVs with ABC-enabled by default, DOE analyzed a Japanese study [29] undertaken by Sony, Seikei University, Sharp, and Panasonic pertaining to room illuminance and ABC. In addition, DOE conducted its own preliminary room illuminance field test.[30] In 2011, the Japanese study of 77 Japanese homes found that the most common room illuminance range of either day or night measurements was 50 to 75 lux, and room illuminance was 100 lux or less in more than 50 percent of the measurements.

In June 2011, DOE conducted its own preliminary field tests of room lighting levels during TV viewing events.[31] Room lighting levels and TV power consumption were logged continuously over a one-to-two week period in nine homes. From this data, light levels were correlated to times when the TV was actually being watched. Across the nine homes, the TV was watched for 10 minutes or more 95 times in the period under consideration. DOE has collated the logged illuminance levels for each of those sessions, defined as ''TV viewing session room illuminance'' measurements, and found that they ranged in duration from 10 minutes to over five hours. Thirty-one, or about one-third, of the TV viewing sessions occurred during the day (defined as 6 a.m. to 6 p.m.), and 64, or about two-thirds, occurred at night (6 p.m. to 6 a.m.). For daytime measurements, the range was 0 to 499 lux, with a mean of 116 lux and a median of 81 lux. For nighttime measurements, the range was 0 to 106 lux, with a mean of 19 lux and a median of 12 lux. Across all room illuminance measurements, the mean was 51 lux and the median was 17 lux. More than 90 percent of measurements had a room illuminance level between 1 and 200 lux, and more than 70 percent of the measurements had a room illuminance level between 5 and 100 lux.

In addition to the Japanese study and its own preliminary study, DOE is also aware that CLASP recently conducted a study which assessed how TV energy consumption is affected by illuminance levels.[32] The CLASP study found that there is no consistency in the way in which manufacturers implement ABC (e.g. automatically adjusting TV luminance according to the ambient light levels). The CLASP study suggested that appropriate room illuminance levels at which to measure ABC are: 10, 50, 100, and 300 lux [33] to properly characterize how ABC performs.

Given DOE's preliminary results that more than 70 percent of measurements fell between a room illuminance level of 5 and 100 lux, and CLASP's recommended room illuminance levels, DOE is proposing to require testing at 10, 50, 100, and 300 lux illuminance levels in this NOPR. DOE is proposing this testing in section 5.5.1 of appendix H to subpart B of 10 CFR part 430. These proposed illuminance levels will help to characterize how TV energy consumption is altered by ABC, which is affected by changes in room lighting. The CLASP study included testing on forty TVs and investigated the energy consumption of TVs using ABC at various illuminance levels. DOE's own laboratory testing revealed that televisions implement ABC differently, with screen luminance often following a complex function of room illuminance. Some televisions exhibit an increase to nearly full screen luminance slightly above 0 lux, while others exhibit an ''S-shaped'' response to room illuminance, with maximum change occurring between approximately 50 and 100–150 lux. Having at least three (and ideally four) measurement points at increasing room illuminance levels can begin to capture the shapes of either of these behaviors that become clearly evident with larger numbers of measurements.

DOE is not proposing testing at 0 lux, because it believes that ambient lighting levels this low are very difficult to achieve in practice in homes or

[29] Matsumoto et al., ''Appropriate Luminance of LCD Television Screens under Real Viewing Conditions at Home'', The SID Digest, (2011).

[30] The preliminary field tests of room lighting levels can be found on the DOE Web site: *Appliance and Commercial Equipment Standards: Television Sets.* U.S. Department of Energy. August 2, 2011. *<http://www1.eere.energy.gov/buildings/appliance_standards/residential/tv_sets.html>.*

[31] Id.

[32] Jones, Keith. *Analysis of Television Luminance and Power Consumption,* CLASP, August 29, 2011, *www.clasponline.org/, <http://www.clasponline.org/en/ResourcesTools/Resources/StandardsLabelingResourceLibrary/2011/Analysis-of-tv-luminance-and-power-consumption>.*

[33] *Id.*

laboratories when the television is operating. DOE is only proposing one point above 100 lux, based on the limited evidence available from the Japanese study and its own study (both referenced above), DOE assumes that viewing at illuminance levels higher than 100 lux will be limited. The studies measured room illuminance at different points—the Japanese study from the top of the television and facing the viewer, the DOE study from the bottom bezel of the television and facing the viewer—however, with the limited data collected, static measurements of light levels at these locations in the DOE study suggest that the difference in the recorded values is relatively small (12 percent lower when measured at the top of the television). DOE is also proposing to measure these 4 illuminace values with the IEC 62087–2011 main menu displayed on the TV. This screen is a static image that is seen directly before the Dynamic Broadcast video clip and is a predominantly black screen. This allows the TV to stay on so it doesn't need to be warmed up again and increases repeatability.

DOE is proposing testing at multiple levels to reflect how ABC could change display luminance in relation to changes in room illuminance. Although DOE believes that testing at four illuminance levels is the most appropriate for this test procedure, it is also considering measuring at alternative illuminance levels to reduce test burden. DOE welcomes any comment on potentially testing less than four room illuminance levels, including which levels would be recommended and the rationale for such levels.

DOE believes that it is difficult to measure exact ambient light values with illuminance meters having high accuracy (high resolution). As such, DOE is proposing specified tolerance values for each ambient light level. All measurements made shall be within the specified tolerance levels. The proposed tolerance levels for room illuminance measurements are based on the observation that power consumed by ABC-enabled products varies greatly with changes in ambient lighting conditions less than 100 lux. Based on this observation, DOE would require that measurements at lower lighting levels be made as accurate as possible and, as such, proposes low tolerance levels at 10 lux (± 1 lux) and 50 lux (± 2 lux). DOE observed low variance in power consumed by TVs at higher ambient light levels and hence proposes greater tolerance levels at 100 lux (± 5 lux) and 300 lux (± 9 lux). These tolerance requirements have been incorporated in section 5.5.1 of appendix H to subpart B of 10 CFR part 430. DOE seeks comments from interested parties on setting tolerance levels at each room illuminance point. (See Issue 8 in section V.E ''Issues On Which DOE Seeks Comment'')

DOE is currently not proposing to weigh power consumption at each of the illuminance levels. DOE is, however, considering a weighted average to calculate the overall power consumption recorded when testing at the four illumination levels by assigning equal weights to each of the values. The weighting would reflect the amount of time that the average TV spends in that particular illuminance level. Providing weighting to different illuminance levels reflects the fact that TVs are watched in rooms with different lighting levels and at different times of the day. If DOE had additional data on the proportion of time TVs spend within different illuminance ranges, DOE might consider assigning different weightings to the power consumptions recorded at each illuminance level. DOE welcomes comments from interested parties on the methods under consideration. (See Issue 8 in section V.E ''Issues On Which DOE Seeks Comment'').

ii. Method for Creating Illuminance Conditions

Once the respective illuminance levels have been selected, DOE must specify how to create the room illuminance in the test procedure to be both repeatable and representative. This involves the orientation of the illuminance measurement meter, the light source type and the location for measurement.

In today's NOPR, DOE is proposing to measure the room illuminance at the location of the ABC sensor on the TV with the light entering directly into the sensor. This method is currently being employed by ENERGY STAR v. 5.3 as well as IEC 62087–2011, and was generally supported by interested parties. However, DOE is also considering an alternative method. The alternative method requires that the room illuminance be created using a diffused light source, and be measured either at the center of the screen or the location of the ABC sensor. In response to the 2010 RFI, DOE received comments on the appropriate method for creating illuminance levels.

DOE received general comments requesting a test procedure that clearly outlines where to create and measure room illuminance with respect to the TV. NRDC encourages DOE to establish a more specific test method on how to measure the light that is entering the ABC sensor and/or the TV screen, but NRDC did not specify an appropriate alternative. (NRDC, No. 5 at p. 5) NRDC stated that the test procedure should provide detail on the orientation of the illuminance meter, the type of light source, and the location for measurement. (NRDC, No. 5 at p. 6) PG&E and California IOUs recommended that DOE specify guidance on illuminance meter orientation, source light and the direction of the source light to ensure consistent testing across products. (PG&E, No. 12 at p. 3; California IOUs, No. 9 at p. 3)

Commenters expressed desire for measuring the room illuminance at the location of the light presence sensor with the light directly entering the sensor. PG&E and the California IOUs recommend that measurement of room illuminance be taken at the location of the TV light presence sensor. (PG&E, No. 12 at p. 3; California IOUs, No. 9 at p. 3) Sony believed that to accurately capture light conditions, the illuminance meter should be placed at the sensor. (Sony, No. 8 at p. 3) Panasonic recommended that ABC be measured with the light entering directly into the TV's ambient light sensor as specified by IEC 62087–2008, ENERGY STAR v. 4.1, and CEA 2037. (Panasonic, No. 6 at p. 6) CEA similarly commented that the illuminance measurement should be taken at the sensor and the illuminance meter should be in the same horizontal orientation as the light sensor to ensure repeatability across measurements. (CEA, No. 13 at p. 6) Finally, Panasonic commented that the illuminance should be measured immediately adjacent and in the same plane as the TV's ambient light sensor opening. They believe that measuring light at the center of the screen will not provide meaningful and repeatable results. (Panasonic, No. 6 at p. 6) SHARP commented that manufacturers do not gain any advantage by putting the ABC sensor in an obscure or hidden position, and thus the illuminance measurement location should be at the sensor. (SHARP, No. 14 at p. 6) SHARP also believed that no problem exists with respect to measurement location and lighting, and anything other than the IEC 62087–2008 method adds complexity, uncertainty and cost to the measurement. (SHARP, No. 14 at p. 6)

DOE evaluated a second option for furnishing ambient light to the automatic brightness control sensors in a laboratory setup. This second option utilizes a diffuse light source. Such a source would be located further away from the TV than a direct source, and its light would reach the TV through a

combination of direct and indirect (e.g., reflections from the ceiling, walls, and floor) pathways. Although a diffuse light source better represents actual in-home lighting conditions, DOE determined that such an approach depends on too many variables that are difficult to control and which introduce uncertainties into the test procedure relative to the direct approach. The diffuse light source would need to be much brighter in order to yield the target lux values at the television. The light would be arriving at the television from many different angles and would be incident on the television screen as well as its ABC sensor. This increases the likelihood that the technician's position in the room during the test would influence the measured result, and makes it difficult to employ a non-contact luminance meter for television screen brightness measurements. Finally, differences in test room size, configuration, surface reflectivity, and light source type would also make it very difficult to replicate identical test conditions in multiple laboratories. For the above reasons, DOE proposes to employ only a direct light source for all ABC testing.

In addition to specifying to lighting position and sensor measurement location, DOE also believes that it is necessary to specify the lighting type. Of artificial lighting sources, incandescent light most closely follows the spectral distribution of natural light. Compact fluorescent lights (CFL) and LED tend to be discontinuous in the spectral density curves which may impact the ABC sensors ability to perceive light. Incandescent lights have a color rendering index (CRI) of about 100 while CFL and LED have a CRI ranging from 75–85 (natural light has a CRI of 100, a metric used for how light makes the perceived color of an object appear). DOE is proposing that the room illuminance be created only by using 100 watt halogen incandescent light bulbs, although the number of bulbs needed is dependent on the size of the room and the distance from the ABC sensor.

While DOE feels that specifying a halogen incandescent is sufficient for creating a repeatable lighting condition, DOE requests comments on incorporating a color temperature range in addition to lighting type. Consumers have a wide variety of lighting options to choose from ranging from ''warm'' (2800–3000 K) to ''cool'' (3600–5500 K) color temperatures and it is still unknown how these characteristics may be perceived by ABC sensors. DOE also requests comments on a warm-up time for the lighting source. Incandescent lights do not typically have the same warm-up characteristics as other lights like CFL that require time before reaching their optimal brightness.

In today's NOPR, DOE is proposing to measure the room illuminance at the location of the ABC sensor on the TV with a halogen incandescent light source entering directly into the sensor in section 5.5.2 of appendix H to subpart B of 10 CFR part 430. Although neither ENERGY STAR v. 5.3 or IEC 62087–2011 specifies the particular location of the light source, DOE believes that through specifying the location, it will have a more thorough and complete test procedure that is representative of actual use. Although DOE is proposing to measure using only one light source, DOE is also interested in receiving feedback on measuring using multiple light sources. (See Issue 9 in section V.E ''Issues On Which DOE Seeks Comment'').

c. Television Sets Shipped Without Automatic Brightness Control Enabled

For TVs shipped without ABC enabled, DOE is proposing to incorporate testing consistent to that in the ENERGY STAR v. 5.3, which references Section 11: Measuring Conditions for Television Sets in On (average) Mode of IEC 62087, Ed 2.0. DOE believes that this is a respected method that is widely accepted in industry and reasonably measures the average on mode power consumption of the TV in section 5.4.1 of appendix H to subpart B of 10 CFR part 430. In this test procedure, the on mode power consumption is obtained by playing the IEC 62087–2011 dynamic-broadcast video signal (which was created to mimic typical TV content) in ''as shipped'' condition which is the mode in which DOE assumes that most TVs stay according to feedback from Sony. As noted above, Sony commented that their call center data indicates that more than 95 percent of returned sets remain in the home picture setting when received. (Sony, No. 8 at p. 2) DOE did not receive any comments pertaining to on mode power testing for TVs shipped without ABC enabled.

d. Three Dimensional Display Testing

In the 2010 RFI, DOE requested comment on incorporating a test method for testing TVs capable of displaying 3D images in 3D mode. 75 FR 54048, 54051. Interested parties commented on the inclusion of this testing into the DOE test procedure.

All agreed that 3D was likely to become increasingly prevalent. Interested parties, however, had mixed views as to the importance of DOE incorporating 3D testing in this version of its test procedure. Some did not seem to consider it a priority, some considered it premature, stating that the market share is currently small but rapidly increasing and the technology is still developing, and others felt it should clearly be included. Sony offered its support to DOE's studies into 3D technology. They believe that the amount of time consumers spend watching 3D content is currently relatively small compared to 2D content but increasing. Sony believes that sufficient time should be allowed for the IEC to create a 3D version of its 2D dynamic broadcast-content video signal. (Sony, No. 8 at p. 3) Mitsubishi commented that a test procedure for 3D should be included in DOE's test procedure but it need not involve a 3D disc, 2D content could be converted to 3D in real time. (Mitsubishi, No. 7 at p. 6) NRDC commented that TVs having the ''3D boost'' feature could result in a significant increase in TV power to display 3D content. (NRDC, No. 5 at p. 6) Panasonic asserts that TVs display 3D images in a similar manner as 2D images. Thus, they believe that a TV that is efficient in 2D mode will also be efficient in 3D mode, when compared to other TVs operating in 3D mode. Once IEC has developed a 3D clip, or even before, Panasonic believes that it should be referenced by DOE. (Panasonic, No. 6 at p. 7) CEA believes that DOE should support standards development organizations investigating 3D technologies but due to the lack of a standardized method and current small volumes on the market, 3D technology should not be included in DOE's current test procedure. CEA acknowledged that it may be appropriate to modify the DOE test procedure in the future to include 3D testing. (CEA, No. 13 at pp. 7–8) P.R. China suggested that it is too early to consider 3D technology in the DOE test procedure. (P.R. China, No. 16 at p. 5) SHARP believes that it is premature to set power standards for TV in 3D modes stating that there are three things that are needed: Standardized language for testing, a standardized test signal, and accurate weightings based on actual viewing habits. SHARP recommended that the IEC develop a 3D dynamic broadcast-content video signal, but such a result is unlikely to be available before late 2012. (SHARP, No. 14 at p. 7) DOE should revisit 3D power measurements when a 3D dynamic broadcast-content video signal becomes available—probably no earlier than 2013. (SHARP, No. 14 at p. 7) PG&E, California IOUs, and Mitsubishi supported DOE in currently including 3D testing in its

proposed test procedure. PG&E and California IOUs commented that 3D TVs are expected to significantly increase in market share, and drop in price. Therefore they urged DOE to develop a test procedure that applies to 3D TVs on the market. (California IOUs, No. 9 at p. 3; PG&E, No. 12 at p. 3) Although Mitsubishi recognized the difficulties of creating a test procedure for testing 3D, they believed that power consumption in 3D operating mode(s) should have a single, recognized test procedure, and that power consumption in 3D operating mode(s) should be measured. (Mitsubishi, No. 7 at p. 6)

DOE recognizes that 3D content is becoming increasingly popular and that 3D TVs are becoming more affordable. PG&E and California IOUs cited a study that showed that 3D TVs are projected to increase from 4.2 million units in 2010 to 78 million units by 2015, rising at a compound annual growth rate of 80 percent, and that the global average selling price for 3D TVs in 2015 will drop by more than half the price in 2010. [34] (California IOUs, No. 9 at p. 3; PG&E, No. 12 at p. 3) Industry has more recently indicated that over the next couple of years 3D will become a common feature on many TVs, almost available as standard on larger screen sizes and with higher end models (Society for Information Display conference, 2011). Moreover, 3D content is becoming increasingly prevalent with emerging native 3D material (movies, sports content etc. shot in 3D), and Blu-ray players and TVs on the market with the ability to convert content from 2D to 3D. DOE understands the need for a standardized method for measuring the power consumption of TVs in 3D mode. DOE's research thus far indicates that for most mainstream technologies' 3D mode consumes a significant additional power premium. However, DOE understands that 3D is a developing technology and will most likely take time to mature.

In today's NOPR, DOE is not proposing to include a test procedure to measure 3D energy consumption for the reasons that: (a) 3D technology has not yet stabilized, and (b) a uniform method for 3D mode energy measurement has not yet been created. However, DOE is considering two potential alternatives for future inclusion in its test procedure. The two alternatives involve either creating a 3D dynamic broadcast-content video signal similar to that of the IEC 62087–2011 dynamic broadcast-content video signal, or employing a device that can uniformly convert the 2D dynamic broadcast-content video signal to 3D and output 3D content in real time. The two potential test methods under consideration are outlined below.

For the first approach that DOE is considering, DOE would create a 3D test disc capable of being played in a Blu-ray player. DOE has been working closely with the IEC. IEC has agreed in principle to provide DOE with all the rights which it is able to provide DOE to modify the 2D test clip and distribute modified versions of the test clip. If DOE creates a modified 3D version of the IEC test clip for any purpose, it has agreed to provide a copy to IEC which IEC could then use in its development of an IEC 3D test clip.[35]

It is the intent of DOE that the disc will be capable of playing Blu-ray format 3D, an HDMI 1.4 interface at 1080 horizontal lines of vertical resolution and at least 1440 vertical lines of horizontal resolution. When playing the disc, 3D capable TVs will recognize that the disc contains 3D content, and will switch into 3D mode. The average APL of the 3D disc would be 34 percent thus simulating normal viewing content even while the TV is in 3D mode. At this time, DOE believes that this approach is the best approach for developing a 3D test procedure and is interested in working with the IEC and other interested parties in its development.

DOE is also considering a second approach, which employs a device that can convert the 2D test clip to 3D and output 3D content in real time. Under this approach, DOE would try to develop a performance specification for Blu-ray devices that have this capability to ensure that the test results are consistent across labs if using different 2D to 3D convertors. DOE has tested some of these devices, and cannot conclude at this time what the performance specification should be for these devices. However, DOE welcomes comments on this aspect of the test procedure under consideration.

As mentioned, DOE has performed 3D testing using two Blu-ray players available for sale in the U.S. from different manufacturers, both of which are able to convert 2D images to 3D in real time. DOE measured the average power consumption over a specified amount of time and then played a 2D disc of the same footage on the 2D to 3D converter. DOE found very little difference between TV power measured using 3D source material and TV power measured using 2D source material converted to 3D using the Blu-ray players. To make the comparison, DOE used market available Blu-ray videos with both a 3D and a 2D version and measured the energy consumption over the same ten minute section of the film using both methods for generating 3D material. The comparison was made on five 3D capable televisions spanning LED LCD, plasma, and DLP technologies.

DOE believes that, generally, the limited test results of the convertor are comparable to those of playing 3D content. However, there were issues with this approach. DOE is concerned that the variability found between playing the test clip in the converter, versus playing a 3D test clip, can be a function of the test clip, converter and TV used in the test and is not certain how to develop an adequate performance specification for the converter alone. DOE also found through testing that not all convertors worked with all TV brands. Further, DOE determined that, in some cases, the convertors put the TV into a mode that consumed less energy when playing 2D content converted to 3D than when playing the same content in 2D.

DOE requests comment on these two options for generating the video signal for 3D TVs, along with any other considerations for testing 3D TVs. (See Issue 10 in section V.E ''Issues On Which DOE Seeks Comment'').

5. Standby and Off Modes

As mentioned above, EISA 2007 requires DOE to include consideration of standby mode and off mode energy consumption in future amendments to both its test procedure and energy conservation standard. In order to adhere to EISA 2007, DOE is proposing to include the standby mode requirements according to IEC 62087–2011 and the off mode requirements according to IEC 62301–2011. When developing a proposed standby and off mode test procedure, DOE assessed both IEC 62301–2005 Household Electrical Appliances—Measurement of Standby Power and IEC 62087–2011. ENERGY STAR v. 5.3 references IEC 62087–2011. In today's NOPR, DOE is proposing to incorporate standby tests for standby-passive in section 5.6.1 (standby-passive mode test) of appendix H to subpart B of 10 CFR part 430 and standby-active, high in section 5.6.2 (standby-active, high mode test) of appendix H to subpart B of 10 CFR part 430 as well as

[34] Global 3–D TV Shipments Set to Soar to 78 Million Units in 2015. Riddhi Patel. iSuppli Press Release. March 1, 2010.

[35] IEC and necessary copyright holders have agreed in principle to allow DOE to modify the test clip and return it to IEC. IEC is able to assign rights over the material in the test clip with the possible exception of certain portions of the test clip owned by one copyright holder. Currently, DOE is in discussions with that copyright holder.

an off mode test in section 5.7 (off mode) of appendix H to subpart B of 10 CFR part 430. Although DOE is not currently proposing to include a standby test for standby-active, low, DOE is considering this requirement for the future.

In the 2010 RFI, DOE requested comments dealing with standby and off mode. Specifically DOE focused on additional functions, internet connectivity and power saving technologies, since they can possibly alter the energy consumed by the TV. 75 FR 54048, 54051.

a. Additional Functions

As mentioned above, additional functions have the potential to increase energy consumption while the TV is in standby and off mode. Additional functions are defined as any function that is not required for the basic operation of the device. Although DOE did not specifically request comments pertaining to additional functions in the 2010 RFI, both NRDC and SHARP provided comments on assessing the power use associated with additional functions.

NRDC asked that DOE provide guidance in its test procedure for additional functions and that DOE revise the standby section of IEC 62087–2008, which is the same as IEC 62087–2011. NRDC believes that the test procedure must address whether the TVs additional functions should be left as is, turned on, or turned off/disabled prior to testing. (NRDC, No. 5 at p. 2)

Although NRDC requested guidance, they were generally opposed to testing with additional functions switched on unless initially enabled by default. NRDC believes that built-in DVD and Blu-ray players should be tested without a disc inserted, and play should not be selected. However, they believe that the DVD and Blu-ray players should not be allowed to be turned off or physically removed prior to testing. (NRDC, No. 5 at p. 2) NRDC also commented that the TV should be tested without the cable card inserted, but DOE should potentially include a supplement to its test procedure that allows guidance on how to report for features such as cable cards. (NRDC, No. 5 at p. 3) Additionally, DOE should gather data and evaluate methods, including the Australian method, which includes measuring standby-active and standby-passive once the TV has been tuned to an Australian broadcast channel. (NRDC, No. 5 at p. 7)

SHARP was also opposed to enabling additional functions when conducting energy measurements. SHARP commented that IEC 62087–2008 requires that additional functions be turned off to provide for equivalent TV model comparison. (SHARP, No. 14 at p. 8) SHARP recommends that DOE follow precedence and measure the basic TV functions without intervention in the areas of nascent technologies, services and innovations. (SHARP, No. 14 at p. 9)

In this NOPR, DOE is proposing testing the TV as shipped, without manually enabling any additional functions. This method is consistent with the comments made by both SHARP and NRDC. Although enabling additional functions while testing in standby and off mode would encourage manufacturers to lower energy consumption for those functions, it would make it difficult to compare TVs with different functions. Also, DOE is not aware of any usage data that illustrates how consumers use TVs with additional functions and DOE believes that proposing testing with additional functions would require an understanding of such usage.

b. Power Saving Technologies

The number of TVs that are being sold with various power saving technologies is continuing to increase, and therefore DOE investigated the how these technologies affect energy consumption. These technologies include, but are not limited to, auto-shut-off, presence sensor, DPMS, and HDMI–CEC.

Panasonic, Sony, NRDC, and SHARP believe that TVs with power saving technologies should not be given an energy credit in the current rulemaking because many are still being developed. Panasonic believes that it would be difficult to determine the amount of power saved and to obtain data by various power saving technologies and complex measurement procedures will not be useful. (Panasonic, No. 6 at p. 7) Sony stated that it is impossible to know the actual savings of energy saving functions, so additional studies are needed prior to DOE adopting them in its test procedure. (Sony, No. 8 at p. 4) LG stated that the ENERGY STAR and IEC 62087–2008 test procedure, which only account for ABC, adequately evaluate power saving functions available today. (LG, No. 3 at p. 2) CEA also stated that not every possible energy using feature needs to be covered, especially if it is too difficult, impractical, costly or speculative. (CEA, No. 13 at p. 2) More specifically, NRDC and Panasonic do not support giving credit for presence sensors; a power saving technology that turns the TV off if it senses that no consumers are viewing it. They believe that the technology will likely be disabled by the consumer; assuming the TV is shipped with presence sensors enabled. (NRDC, No. 5 at p. 7; Panasonic, No. 6 at p. 8).

SHARP also noted that many power saving technologies are proprietary and should therefore be avoided. Specifically, DPMS has intellectual property implications. (SHARP, No. 14 at p. 9) SHARP believes that HDMI–CEC can provide some mechanisms for power saving. They supported their comment by stating that the application layer is not well enough defined for consistent cross-company interoperability, and many HDMI–CEC implementations are currently proprietary. (SHARP, No. 14 at p. 9)

Many interested parties supported DOE research into power saving technologies. NRDC urged DOE to revisit power savings features, and whether credits should be provided for power saving features. (NRDC, No. 5 at p. 7) CEA also encouraged DOE to continue to study and investigate energy saving features but be cautious as to not promote technology that is restrictive and costly. (CEA, No. 13 at p. 8) CERC believes that the standard should be allowed to evolve with new technologies. CERC commented that technologies still in early development, including automatic shut-off and ABC, should be allowed to be developed more fully before a standard and test procedure are imposed on their operation, allowing manufacturers more incentive to innovate. (CERC, No. 10 at pp. 2–3) PG&E and the California IOUs urged DOE to account for new technologies in the test procedure to the greatest extent possible. (PG&E, No. 12 at p. 4; California IOUs, No. 9 at p. 4)

Finally, some manufacturers commented on specific power saving technologies available in products today. Sony commented that its TVs contain intelligent presence sensors with face and motion detectors, light sensors, power savings (regardless of picture mode), idle TV standby, auto shut-off and the energy savings switch (completely off). (Sony, No. 8 at p. 4) LG commented that their TVs have features that place the TV into standby mode if no signal is present for 15 minutes. (LG, No. 3 at p. 2) SHARP commented that the auto-standby feature that is available in some manufacturers' products can potentially save energy, but also may annoy consumers. (SHARP, No. 14 at p. 9) SHARP also believes that California's requirement that the power button put the TV into passive standby, can have negative consequences, such as terminating a nearly complete program guide download. (SHARP, No. 14 at p. 9)

Given the interested party feedback, DOE is not proposing to test new power saving technologies because DOE believes more investigation is needed to be able to better understand any potential benefits from these technologies. Although DOE will continue to investigate the new technologies, DOE believes that the market is currently at too early a stage of development. In order to continue to investigate these new technologies, DOE welcomes interest parties submit information pertaining to all power saving technologies, which would help DOE in its investigation present on TVs.

c. Standby Modes

i. Standby-Passive Mode

As stated in section 5 above, DOE is proposing a test procedure for standby-passive mode in section 5.6.1 (standby-passive mode test) of appendix H to subpart B of 10 CFR part 430. IEC 62087–2011 defines standby-passive mode as the mode in which the appliance is connected to a power source, produces neither sound nor picture but can be switched into another mode with the remote control unit or an internal signal as referenced in III.C.3.a of this NOPR. Testing in this mode would require putting the TV into standby-passive mode as defined in section 2.12 (standby-passive mode) of appendix H in subpart B of 10 CFR part 430, and measuring the power consumed according to section 4.3.1 of IEC 62301–2011. Standby-passive mode would include modes such as when the TV is connected to the internet but not actively receiving a signal.

ii. Standby-Active, Low Mode

The number of TVs that are being sold with the capability of accessing the internet (either wirelessly or via Ethernet) is continuing to increase; PG&E and California IOUs stated that by 2014, internet-enabled TVs are estimated to account for 54 percent of the total global TV market. They supported their statement by commenting that in 2010, shipments of these TVs rose 125 percent globally from 2009. (PG&E, No. 12 at p. 4; California IOUs, No. 9 at p. 4) In the 2010 RFI, DOE requested comments on testing TVs with internet connectivity. 75 FR 54048, 54051.

Some interested parties commented in favor of TVs being connected to the internet when measuring standby and off mode energy consumption. NRDC suggested that the TV should be connected to the internet, then turned off normally, and the energy consumption associated with the TV being connected to the internet should be measured and reported as part of standby power use. (NRDC, No. 5 at p. 2) PG&E and the California IOUs also stated that DOE should incorporate internet connectivity and power usage associated with this feature in the test procedure. They suggested that DOE do this by including a network mode, consistent with what will be included in IEC 62301 Edition 2.0. (PG&E, No. 12 at p. 4; California IOUs, No. 9 at p. 4)

Other interested parties commented that internet connectivity energy consumption should not be included in the test procedure. Interested parties commented against including a general internet measurement as well as enabling internet when conducting the standby test. Interested parties reasoned that internet connectivity has not been researched thoroughly, and is still in the early development stages. Sony commented that their limited data suggests that the power consumption of TVs equipped with Ethernet ports is equivalent to the power consumption in the home mode while streaming contracted network connects from the various service providers. (Sony, No. 8 at p. 3) Sony also stated that because power and usage of internet capable TVs is unknown, additional study is needed prior to incorporating it into the test procedure. (Sony, No. 8 at p. 3) CEA similarly stated that internet connectivity is still in an early phase of development and should therefore not be included in the test procedure without further research. (CEA, No. 13 at p. 8) Panasonic recommends using the same on mode power measurement with the IEC 62087–2008 dynamic-broadcast video signal, regardless of the TV's internet capabilities. (Panasonic, No. 6 at p. 8) Panasonic believes that the power consumed from an internet connection is minimal and complex, and will be difficult to reproduce. (Panasonic, No. 6 at p. 8) SHARP further commented that consumers all use the internet differently, so setting a test procedure to mirror actual internet use would be a daunting task with minimal value. (SHARP, No. 14 at p. 8) SHARP believes that much more study is required before DOE can characterize the power consumed from TVs based on active internet use. (SHARP, No. 14 at p. 8) SHARP believes that due to competitive pricing, TVs have limited storage capacity, and therefore internet communications are limited or non-existent when the TV is in sleep mode, making testing it not relevant. (SHARP, No. 14 at p. 8)

Other interested parties commented on specific details pertaining to internet connectivity energy consumption. NRDC believes that the test procedure should have language to ensure that no content is being downloaded from the internet while the measurement is being made. (NRDC, No. 5 at pp. 2–3) LG commented that ''currently the HDMI input is available to the IEC Standard 62087 internet source; however it is impossible to implement it through the current environment LAN Port.'' (LG, No. 3 at p. 2) DOE notes that while IEC 62087–2011 provides a video signal of different Web sites to represent internet energy consumption, there is currently no standard method for measuring actual internet usage when connected to the internet via a LAN Port.

Given the comments received in the 2010 RFI, DOE researched the energy consumption associated with internet, HDMI, and cable connectivity. DOE completed standby and off mode energy testing while the TV was connected to the internet (both wirelessly and via Ethernet), while connected to a cable signal, while connected to a peripheral device through a HDMI cable and while not connected to input or output sources except for power. DOE found very little evidence of increased energy consumption associated with additional connections while the TV was in standby and off mode [36].

In today's NOPR, DOE is proposing to test standby and off mode energy consumption without having the TV connected to the internet in sections 5.6 (standby mode tests) and 5.7 (off mode test) of appendix H to subpart B of 10 CFR part 430. As mentioned above, DOE also conducted testing when the TV was connected to both a cable signal and an HDMI input. DOE did not measure a significant power increase when the TV was connected to the internet, cable or an HDMI input while in standby mode or off mode [37] DOE believes that conducting additional standby testing while the TV is connected to an internet, cable or HDMI input is unduly burdensome due to the lack of significant results indicating increased energy consumption from DOE's testing. Therefore, DOE is not proposing to require that the TV be connected to a cable input, HDMI input or to the internet when testing standby and off mode energy consumption. However, DOE welcomes comments by interested parties on the energy consumption

[36] The data indicating a lack of increased power consumption associated with connecting the TV to the internet, cable or an HDMI input can be found on the DOE Web site: *Appliance and Commercial Equipment Standards: Television Sets.* U.S. Department of Energy. August 2, 2011. *http://www1.eere.energy.gov/buildings/appliance_standards/residential/tv_sets.html.*

[37] *Id.*

associated with internet connectivity in standby mode should be included. (See Issue 11 in section V.E ''Issues On Which DOE Seeks Comment'').

iii. Standby-Active, High Mode

IEC defines standby-active, high as the mode when the appliance is connected to a power source, produces neither sound nor picture but can be switched into another mode with the remote control unit or an internal signal and can additionally be switched into another mode with an external signal and is exchanging/receiving data with/from an external source. DOE believes that the TV is in standby-active, high mode when the TV is actively exchanging/receiving data (likely from the internet) as well as while in DAM mode. In the 2010 RFI, DOE requested feedback as to the possibility of including a DAM test. 75 FR 54048, 54051.

iv. Download Acquisition Mode

ENERGY STAR v. 5.3 defines DAM as the mode where the product is connected to a mains power source, is not producing a sound or a picture, and is actively downloading data, to include but not limited to, channel listing information according to a defined schedule for use by the electronic programming guide, TV setup data, channel map updates, TV firmware updates, monitoring for emergency messaging/communications and/or otherwise communicating through a network protocol. DOE believes it is important to include DAM testing because the tested TVs had heightened energy consumption while in this mode.

Several interested parties commented that DAM should be tested. PG&E and the California IOUs indicated that there has been at least one reported instance of a TV consuming a significantly greater amount of power and spending a majority of time in DAM when the TV should have been in standby mode. Therefore, they urged DOE to account for DAM in its test procedure. (PG&E, No. 12 at p. 5; California IOUs, No. 9 at p. 5) They requested that the test programming content, used for testing in DAM, should be publically available and able to be utilized by non-proprietary technology. (PG&E, No. 12 at p. 4; California IOUs, No. 9 at p. 4)

Many interested parties specifically suggested that DOE implement the ''CEA Test Procedure for Download Acquisition Mode Testing'' [38] (CEA test procedure for DAM testing). Specifically, Sony, LG, Panasonic and CEA recommended that DOE adopt this test procedure. (Sony, No. 8 at p. 3; LG, No. 3 at p. 2; Panasonic, No. 6 at p. 8; CEA, No. 13 at p. 8) Panasonic and Sony supported their recommendations by noting that ENERGY STAR v. 4.1 references the CEA test procedure for DAM testing. (Panasonic, No. 6 at p. 8; CEA, No. 13 at p. 8)

Alternatively, SHARP commented that although the CEA test procedure for DAM testing is a good test procedure, it should not be incorporated into DOE's test procedure. SHARP supports the flexibility of the CEA test procedure for DAM testing, but is concerned that it is not specific enough to be used by third parties. However, SHARP is not aware of any test procedure that is specific enough to fit these criteria. (SHARP, No. 14 at pp. 8, 10)

In the 2010 RFI, DOE noted that ENERGY STAR v. 4.1 tests DAM according to the Rovi DAM test procedure. However, Rovi commented that DOE should not incorporate the Rovi DAM test procedure into the DOE test procedure. (Rovi, No. 4 at p. 2) Rovi explained that EPG software maintains a local database of programming available to the viewer, which is periodically downloaded during times when the TV is in the standby or off mode. Rovi noted that the location, previous downloads, data delivery method and communication errors are among the things that affected power consumption, meaning if any of these conditions are varied, different results will be obtained. (Rovi, No. 4 at p. 1) Rovi stated that in the near-future a revision to ENERGY STAR v. 4.1 will replace the Rovi test procedure with a generic system that depends in large measure on specific technical knowledge of the device under test (after the publication of the 2010 RFI, ENERGY STAR has revised their test procedure and standard to include the CEA test procedure for DAM testing). (Rovi, No. 4 at p. 1)

DOE notes that the CEA test procedure for DAM testing does not identify specific connections to be used when conducting testing. CEA only states that an appropriate signal source for communication should be used but does not specify what connection should be utilized when more than one connection could be used for communication with the DAM function. DOE believes that a hierarchy of network connection types is needed when more than one connection is capable of communicating with the DAM function to produce a more repeatable test procedure. DOE is proposing the following priority to ensure consistency across standby-active, high mode tests in section 5.6.2.1 of appendix H to subpart B of 10 CFR part 430:

(1) Wi-Fi
(2) Ethernet. If the UUT supports an Energy Efficient Ethernet, then it shall be tested using that connection.
(3) Thunderbolt
(4) USB
(5) Firewire
(6) Other

In today's NOPR, DOE is proposing to include the DAM energy consumption testing under its standby-active, high test method as defined in 2.3 (download acquisition mode) of appendix H to subpart B of 10 CFR part 430. The majority of interested parties including CEA, Sony, LG, Panasonic, PG&E, California IOUs and NRDC were all in favor of requiring a DAM energy consumption test. Many, including CEA, Sony, LG and Panasonic, recommended incorporating the CEA test procedure for DAM testing. Given the positive input from interested parties supporting a DAM test, and particularly the CEA test procedure for DAM testing, DOE is proposing to incorporate by reference the CEA Procedure for DAM Testing in section 5.6.2 (standby-active, high mode test) of appendix H to subpart B of 10 CFR part 430. DOE is also aware that TVs can communicate and obtain similar information via an internet connection. Although DOE has developed a network connection priority list of preferred connections to conduct DAM testing, DOE seeks comment on using a priority list and the hierarchy that should be used. DOE also seeks comments from interested parties on the method for measuring standby mode energy consumption in all standby modes. (See Issue 12 in section V.E ''Issues On Which DOE Seeks Comment'').

d. Off Mode

DOE is proposing to test TVs in the off mode if applicable. DOE is defining off mode according to the IEC 62087–2011 definition. Off mode is the mode where the appliance is connected to a power source, produces neither sound nor picture, and cannot be switched into any other mode with the remote control unit, an external, or internal signal. This mode will not pertain to TVs that are only able to be switched on or off with a remote, rather it will be applicable to TVs that have an additional switch or method of reaching this mode. In today's NOPR, DOE is proposing that the power consumed in off mode be tested according to IEC 62301–2011

[38] CEA Procedure for Download Acquisition Mode DAM Testing: For TVs, September 8, 2010. <*http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/television/CEA_DAM_Test_Procedure.pdf*>.

section 3.5 in section 5.7 (off mode test) of appendix H to subpart B of 10 CFR part 430. EISA 2007 requires DOE to implement an off mode energy consumption measurement. (42 U.S.C. 6295(gg)(2)(A)) This particular off mode test will meet the EISA 2007 requirements and allow DOE to capture the energy consumption associated with the TV while it is turned off. DOE seeks comments from interested parties on the method for measuring off mode energy consumption. (See Issue 12 in section V.E ''Issues On Which DOE Seeks Comment'').

6. Energy Efficiency Metric(s) for Televisions

In today's NOPR, DOE is considering two methods for determining the metrics of TVs in order to receive stakeholder comments. These methods include a luminance ratio, on mode energy consumption, standby mode energy consumption, and off mode energy consumption.

The first method would output four separate metrics, including a luminance ratio, on mode energy consumption, standby mode energy consumption, and off mode energy consumption. The test procedure yields a ratio of the home picture setting luminance to the retail picture setting luminance. This number would be expressed as a percentage (i.e., the luminance ratio). The test procedure would also output an on mode energy consumption according to the on mode test for TVs with ABC enabled by default or the on mode test for TVs without ABC enabled by default. For the standby mode tests, all TVs should be tested according to the standby-passive mode test. For TVs with DAM, the test procedure would also propose requiring an average energy consumption reading for standby-active, high mode. Finally, the test procedure would record the off mode energy consumption.

Alternatively, DOE is also considering a single output metric based on combining the on, standby, and off-mode energy consumption values to provide an annual energy use. The format of the metric, expressed as annual energy consumption (AEC, kWh/year), would be as follows:

$$AEC_{metric} = ((P_{on} * H_{on} + P_{standby\text{-}passive} * H_{standby\text{-}passive} + P_{off} * H_{off} + DEC_{DAM})/1000) * 365$$

Where:

P_m = power measured in a given mode m (in Watts)

H_m = hours per day spent in mode m

DEC_{DAM} = daily energy consumption in DAM, if applicable (tested according to the CEA DAM test procedure)

Proposed values for H_m (in hours/day) would be as follows:

$H_{on} = 7$

$H_{standby\text{-}passive} = 17$

$H_{off} = 0$

To determine H_{on}, DOE obtained Nielsen TV viewing statistics for the months June 2010 through May 2011.[39] Nielsen collected between 48,791 and 52,105 samples in each month, from a representative cross section of U.S. households. DOE separated the data for each household to consider the primary TV. The mean viewing hours per day for primary TVs was determined for each month, and then the mean across the whole 12 months was taken to provide the final value. It was important to consider 12 months, not just one, as there is significant seasonal variation in viewing habits.

It was assumed that the remainder of the time, TVs would be in standby-passive mode (thus, $H_{standby\text{-}passive} = 24 - H_{on}$), except for the case of TVs with DAM capability, where the average hours per day the TV is in DAM would also be included in the calculation. Therefore, $H_{off} = 0$ is based on the assumption that virtually all TVs remain in standby mode rather than being physically switched off when not in use.

Note that P_{on} is itself a weighted average of measurements for units with automatic brightness control available:

$$P_{on} = P_{10} * W_{10} + P_{50} * W_{50} + P_{100} * W_{100} + P_{300} * W_{300}$$

Where:

P_i = on mode power measured at room illuminance of i lux

W_i = weighting at room illuminance i, expressed in percent.

W_i are proposed to be equally weighted ($W_{10} = W_{50} = W_{100} = W_{300}$ = 25 percent). See Section IIIII.E.4.b.i for further discussion and explanation.

The advantage of using a single metric is that the approximate annual average energy consumption can be calculated within the test procedure. Although a single metric would require manufacturers to represent the efficiency of their TVs in a consistent manner, this is already being accomplished under the FTC Labeling Program for TVs as it is currently using this method. A single metric would help harmonize the different voluntary, incentive, and State programs applicable to TVs. However, the DOE proposed single metric would most likely eliminate the current energy efficiency standards for TVs established by California, since California established separate standards for both on mode and standby mode. All manufacturers would be required to make energy representations with the final DOE test procedure within 180 days after publication. After that time, manufacturers would not be required to provide to California separate results for on mode and standby mode in accordance with the California standard. This single metric would also require a change in the ENERGY STAR Program for TVs, since ENERGY STAR also has separate requirements for on mode, standby mode and DAM. The DOE proposed single metric would require DOE to monitor how the coefficients used to calculate the metric change with consumer usage and technological advancements in the TV market. For instance, the average number of primary TV viewing hours has increased by approximately 0.16 hour per day each year from 2007 to 2011, or 10 percent over four years. Additionally, the single metric considered in this NOPR does not distinguish between different usage profiles for calculating annual energy consumption for types of TVs with different features included in our TV definition, such as computer monitors over 30 inches. Finally, the proposed single metric does not capture all measurements in the test procedure such as power factor and illuminance ratio.

Although DOE is proposing multiple output metrics, it seeks comments from interested parties on both of the methods presented in this NOPR, including the use of a single metric for calculating annual energy consumption. (See Issue 13 in section V.E ''Issues On Which DOE Seeks Comment'').

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a

[39] The Nielsen Company, LLC (2011).

significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *www.gc.doe.gov*.

DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. This proposed rule prescribes a test procedure to be used to develop and implement future energy conservation standards for TVs. DOE certifies that this proposed rule will not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows.

The Small Business Administration (SBA) considers an entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The thresholds set forth in these regulations are based on size standards and codes established by the North American Industry Classification System (NAICS).[40] TV manufacturers are classified under NAICS code 334220, ''Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,'' and are considered small entities if they employ 750 employees or less.

DOE determined that most manufacturers of TVs are large multinational corporations. To develop a list of domestic manufacturers, DOE reviewed the Hoover database[41] and other publicly available data, including the Energy Star qualified TVs database. As a result of its review, DOE determined that there were no TV manufacturers who would qualify as small entities. DOE also notes that manufacturers are already required to use a test procedure similar to DOE's proposed test procedure to make energy representations under the Federal Trade Commission's EnergyGuide labeling program. 76 FR 1038. DOE's proposed test procedure can be conducted concurrently with FTC testing without significant additional burden.

Based on the above, DOE certifies that there would not be a significant impact on a substantial number of small entities and has not prepared an IRFA for this rulemaking. DOE transmitted the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b). DOE requests comment on its conclusion that there are no small business manufacturers.

C. Review Under the Paperwork Reduction Act of 1995

There is currently no information collection requirement related to the test procedure for TVs. In the event that DOE proposes an energy conservation standard with which manufacturers must demonstrate compliance, DOE will seek OMB approval of such information collection requirement.

DOE established regulations for the certification and recordkeeping requirements for certain covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping was subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement was approved by OMB under OMB Control Number 1910–1400. Public reporting burden for the certification was estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As stated above, in the event DOE proposes an energy conservation standard for TVs with which manufacturers must demonstrate compliance, DOE will seek OMB approval of the associated information collection requirement. DOE will seek approval either through a proposed amendment to the information collection requirement approved under OMB control number 1910–1400 or as a separate proposed information collection requirement.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes a test procedure that it expects will be used to develop and implement future energy conservation standards for TVs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule establishes a new test procedure without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that does not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C.

[40] For more information visit: *http://www.sba.gov/*. The size standards are available at *<http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.>*.

[41] Hoovers. Web 12 Dec 2011. *<http://www.hoovers.com/>*.

6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://www.gc.doe.gov.* DOE examined today's proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

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

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

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988) that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action to establish a test procedure for measuring the energy efficiency of TVs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed rule incorporates testing methods contained in annex C.3 and section 11.5.5, 11.5.6, and 11.6 of

the commercial standard, International Electrotechnical Commission 62087 Edition 2.0 2011, ''Method of Measurement for the Power Consumption of Audio, Video and Related Equipment;'' section 5.3.1 of the commercial standard, International Electrotechnical Commission 62301 Edition 2.0 2011, ''Household electrical appliances—Measurement of standby power'' and CEA Procedure for Download Acquisition Mode Testing: For TVs,'' Revision 0.3, September 8, 2010. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review).

As required by section 32(c) of the Federal Energy Administration Act of 1974 as amended, DOE will consult with the Attorney General and the Chairman of the Federal Trade Commission about the impact on competition of using the methods contained in these standards before prescribing a final rule.

V. Public Participation

A. Attendance at Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site *http://www1.eere.energy.gov/buildings/appliance_standards/residential/tv_sets.html.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via regulations.gov. The regulations.gov web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that

regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments

Include contact information each time you submit comments, data, documents, and other information to DOE. Email submissions are preferred. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. Scope of Coverage—DOE seeks comments from interested parties on the proposed scope of this rulemaking, as well as the definition of TVs. Specifically, DOE would like comments on including both TVs and displays greater than 15 inches which are sold with a TV tuner. (See section III.C)

2. Light Measurement Devices—DOE seeks comments from interested parties on the LMD equipment specifications proposed in this NOPR. (See Section III.D.1.c)

3. Signal Source and Generation—DOE seeks comments from interested parties on the signal source and generation specified in this NOPR. (See section III.D.2.c)

4. Picture Settings to Test—DOE seeks comments from interested parties on its proposal to conduct luminance tests in home picture setting and retail picture setting. For testing on mode energy consumption, DOE seeks comment on its proposal to test in home picture setting, along with its consideration to test on mode in both the highest and lowest energy consuming picture settings (or brightest or dimmest), or all picture settings. (See section III.E.1)

5. Luminance Testing—DOE seeks comments from interested parties on its proposed method of luminance testing. DOE also seeks comments on its proposal to include a luminance ratio. (See section III.E.3.b)

6. Warm-up and Stabilization—DOE seeks comments on the proposed method of taking the luminance measurement immediately after displaying the three bar video signal. (See section III.E.3.a)

7. Video signal for Luminance Testing—DOE seeks comments from interested parties on its proposal to use the three bar video signal for luminance testing. DOE further seeks comments on any of the additional video signals that it considered. (See section III.E.3.c)

8. Room Illuminance Levels for Television Sets Shipped with Automatic Brightness Control Enabled—DOE seeks comments from interested parties on whether there should be a limit to the reduction in display luminance achieved from ABC, and how a minimally acceptable display luminance value should be established. DOE also seeks comment from interested parties on its proposal to test TVs shipped with ABC enabled at room illuminance levels of 10, 50, 100, and 300 lux and their respected tolerances. DOE additionally welcomes comments on how these outputs should be weighted and combined. (See section III.E.4.b.i)

9. Method for Creating Illuminance Levels for Television Sets Shipped with Automatic Brightness Control Enabled—DOE seeks comments from interested parties on the method for creating room illuminance levels including both the direct light method that it proposed in this NOPR and the diffused light method considered in this NOPR. DOE also seeks comments from interested parties on setting a color temperature range and a potential warm up period associated with other light sources in that range. (See section III.E.4.b.ii)

10. Three Dimensional Display Testing—DOE seeks comments from interested parties on 3D testing. DOE specifically seeks comment on its two methods under consideration for a future rulemaking which include converting the 2D IEC dynamic broadcast-content video signal to 3D using a real time converting Blu-ray player or creating a 3D version of the IEC dynamic broadcast-content video signal. DOE also seeks comments on how it can best work with the IEC and interested parties to promote the development of a 3D test procedure. (See section III.E.4.d)

11. Internet Connectivity—DOE seeks comments from interested parties on its consideration of testing the Internet as part of on mode; standby-active, high mode; and standby-active, low mode. (See section III.E.4 for on mode and section III.E.5.c.ii for standby-active)

12. Standby and Off Modes—DOE seeks comments from interested parties on testing standby and off mode of TVs according to the procedure outlined, above. (See sections III.E.5.c and III.E.5.d)

13. Single Metrics—DOE seeks comments from interested parties on the alternative approach of using a single metric for calculating annual energy consumption. DOE also seeks comment on its preliminary decision not to take into account the possibility that consumers may switch between preset picture settings. (See section III.E.6)

14. Input Format Hierarchy—DOE seeks comments from interested parties on the hierarchy of input formats required to connect the TV to a video source. (See section III.D.2.c)

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on December 20, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary of Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.2 is amended by:

a. Removing the definitions ''Color television set'' and ''Monochrome television set''; and

b. Revising the definition for ''Television set'' to read as follows:

§ 430.2 Definitions.

* * * * *

Television set (also referred to as ''TV''): A product designed to be powered primarily by mains power having a diagonal screen size of fifteen inches or larger that is manufactured with a TV tuner, and that is capable of displaying dynamic visual information from wired or wireless sources including but not limited to:

(1) Broadcast and similar services for terrestrial, cable, satellite, and/or broadband transmission of analog and/or digital signals; and/or

(2) Display-specific data connections, such as VGA, DVI, HDMI, DisplayPort, used typically for a computer or workstation that is not physically attached to the display; and/or

(3) Media storage devices such as a USB flash drive, memory card, or a DVD; and/or

(4) Network connections, usually using Internet Protocol, typically carried over Ethernet or WiFi.

A TV may contain, but is not limited to, one of the following display technologies: liquid crystal display (LCD), light-emitting diode (LED), cathode-ray tube (CRT), and plasma display panel (PDP). TV also includes TV Combination units that DOE has further defined in appendix H to subpart B of this part.

* * * * *

3. Section 430.3 is amended by:

a. Redesignating paragraphs (h) through (o) as (i) through (p);

b. Adding a new paragraph (h);

c. Adding a new paragraph (j)(6); and

d. Adding new paragraphs (l)(3), (l)(4)

The additions and revisions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(h) *CEA.* Consumer Electronics Association, 1919 South Eads Street Arlington, VA 22202, (866) 858–1555, or go to *http://www.ce.org.*

(1) CEA Procedure for DAM Testing: For TVs, Revision 0.3 (8 September 2010), IBR approved for appendix H to subpart B.

(2) Reserved.

* * * * *

(j) * * *

(6) ENERGY STAR Program Requirements for Televisions, Versions 5.3, approved August 2010, Section 6.2, IBR approved for Appendix H to Subpart B.

* * * * *

(l) * * *

(3) International Electrotechnical Commission (IEC) Standard 62087, (''IEC 62087–2011''), *Methods of measurement of the power consumption of audio, video, and related equipment* (Edition 3.0, 2011–05), Section 11.5.5, 11.5.6, and 11.6 and annex c.3, IBR approved for appendix H to subpart B.

(4) International Electrotechnical Commission (IEC) Standard 62031, (''IEC 62031–2011''), *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01), Section 5.3.1, IBR approved for appendix H to subpart B.

* * * * *

4. Section 430.23 is amended by revising paragraph (h) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(h) *Television Sets.* (1) The energy consumption of a television set, including on mode, standby mode and off mode energy consumption levels expressed in watts, shall be measured in accordance with section 4 of appendix H of this subpart.

* * * * *

5. Appendix H to subpart B of part 430 is added to read as follows.

Appendix H to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Television Sets

1. Scope

This appendix covers the test requirements used to measure the energy consumption of Television Sets.

2. Definitions and Symbols

2.1. *Additional functions* are functions that are not required for the basic operation of the device. Additional functions include, but are not limited to a VCR unit, a DVD unit, a HDD unit, a FM-radio unit, a memory card-reader unit, or an ambient lighting unit.

2.2. *CEA Procedure for Download Acquisition Mode Testing* means the test standard published by the Consumer Electronics Association, entitled ''CEA Procedure for Download Acquisition Mode Testing: For TVs,'' Revision 0.3, September 8, 2010 (incorporated by reference, see § 430.3).

2.3. *Download acquisition mode* is the power mode in which the product is connected to a mains power source, produces neither sound nor picture, and is actively downloading data. Data downloads may include channel listing information for use by an electronic programming guide, TV setup data, channel map updates, firmware updates, monitoring for emergency messaging/communications or other network communications.

2.4. *Home picture setting* (or default picture setting) is the picture setting which is recommended by the manufacturer from the initial set up menu or the mode that the television comes shipped in if no setting is recommended.

2.5. *IEC 62087–2011* means the test standard published by the International Electrotechnical Commission, entitled ''Methods of measurement of the power consumption of audio, video, and related equipment,'' IEC 62087–2011 (incorporated by reference, see § 430.3).

2.6. *IEC 62087–2011 Blu-Ray Dynamic Broadcast-Content Video Signal* means the test clip published by the International Electrotechnical Commission, entitled ''IEC 62087–2011, video content_BD, video content for IEC 62087–2011 on Blu-ray Disc,'' IEC 62087–2011(incorporated by reference, see § 430.3).

2.7. *IEC 62301–2011* means the test standard published by the International Electrotechnical Commission, entitled ''Household electrical appliances—Measurement of standby power,'' IEC 62301–2011 (incorporated by reference, see § 430.3).

2.8. *Luminance* is the photometric measure of the luminous intensity per unit area of light traveling in a given direction, expressed in units of candelas per square meter (cd/m∧2).

2.9. *Off mode* is the mode where the TV is connected to a power source, produces neither sound nor picture and cannot be switched into any other mode with the remote control unit, an external or internal signal.

2.10. *On mode* is the power mode in which the TV is connected to a mains power source, has been activated, and is providing one or more of its principal functions.

2.11. *Retail picture setting* is the preset picture setting in which the TV produces the highest luminance during the on mode conditions.

2.12. *Standby-passive mode* is the mode in which the TV is connected to a power source, produces neither sound nor picture but can be switched into another mode with the remote control unit or an internal signal.

2.13. *Standby-active, high mode* is the mode in which the TV is connected to a power source, produces neither sound nor picture but can be switched into another mode with the remote control unit or an internal signal, and with an external signal, and is exchanging/receiving data with/from an external source.

2.14. *Standby-active, low mode* is the mode in which the TV is connected to a power source, produces neither sound nor picture but can be switched into another mode with the remote control unit or an internal signal and can additionally be switched into another mode with an external signal.

2.15. *Symbol usage.* The following identity relationships are provided to help clarify the symbols used throughout this test procedure.

ABC—Automatic Brightness Control
DAM—Download Acquisition Mode
DVD—Digital Video Disc
DVI—Digital Visual Interface
HDD—Hard Disk Drive
HDMI—High-Definition Multimedia Interface
L_{retail}—Luminance of TV in retail picture setting
L_{home}—Luminance of TV in home picture setting
L—Ratio of L_{home} to L_{retail}
LMD—Luminance Measurement Device
P_{on}—Power consumed for on mode with ABC disabled
P_{10} = Power consumed for on mode, ABC enabled, 10 lux, with a direct light source
P_{50} = Power consumed for on mode, ABC enabled, 50 lux, with a direct light source
P_{100} = Power consumed for on mode, ABC enabled, 100 lux, with a direct light source
P_{300} = Power consumed for on mode, ABC enabled, 300 lux, with a direct light source
$P_{standby\text{-}passive}$—Power consumption for standby-passive mode
$P_{standby\text{-}active,\ high}$—Power consumption for standby-active, high
P_{off}—Power consumption for off mode
THD—Total Harmonic Distortion
TV—Television Set
USB—Universal Serial Bus
VCR—Videocassette Recorder
VGA—Video Graphics Array
W_{10}—Percent Weighting for on mode, ABC enabled, while the Room Illuminance is 10 lux
W_{50}—Percent Weighting for on mode, ABC enabled, while the Room Illuminance is 50 lux
W_{100}—Percent Weighting for on mode, ABC enabled, while the Room Illuminance is 100 lux
W_{300}—Percent Weighting for on mode, ABC enabled, while the Room Illuminance is 300 lux

2.16. *TV combination unit* is a TV in which the TV and one or more additional devices (*e.g.,* DVD player, Blu-ray Disc player, Hard Disk Drive) are combined into a single enclosure, and which meets the following criteria: (a) It is not possible to measure the power of the individual components without removing the product housing; and (b) the product connects to a wall outlet via a single power cord.

2. *Accuracy and Precision of Measurement Equipment.*

3.1. *Electrical Energy Supply.*

3.1.1. *Power Supply.* Carry out measurements using a power supply providing voltage of 115 V at 60 Hz.

The fluctuation of the voltage supplied during the tests shall not exceed ±1 percent. The frequency fluctuation and the harmonic components of the supplied power shall not exceed ±1 percent and 5 percent respectively.

3.1.2. *Power Meter.* The measurement shall be carried out directly by means of a wattmeter, a wattmeter with averaging function, or a watt-hour meter, by dividing the reading by the measuring time. For TVs for which the input video signal varies over time, use a wattmeter with an averaging function to carry out the measurement.

3.1.2.1. The sampling rate of the watt-hour meter or wattmeter with averaging function should be one measurement per second or more frequent.

3.1.2.2. The power measurement instrument used shall measure the power factor and the real power consumed regardless of the power factor of the device under test.

3.1.2.3. Power measurements of 0.5 W or greater shall be made with an uncertainty of less than or equal to 2 percent (at the 95 percent confidence level). Measurements of power of less than 0.5 W shall be made with an uncertainty of less than or equal to 0.01 W (at the 95 percent confidence level). The power measurement instrument shall have a resolution of:

0.01 W or better for power measurements of 10 W or less;

0.1 W or better for power measurements of greater than 10 W up to 100 W;

1 W or better for power measurements of greater than 100 W.

3.1.3. *Light Measurement Device.* All LMDs shall have an accuracy of ±2 percent ±2 digits of the digitally displayed value and repeatability within 0.4 percent ±2 digits of displayed value. LMDs must also have an acceptance angle of 3 degrees or less.

4. *Test Room and Set-Up Criteria.*

4.1. *Installation.* Install the TV in accordance with manufacturer's instructions.

4.2. *Dark Room Conditions.* All luminance testing (with a non-contact meter) and on mode testing (with ABC enable by default) shall be performed in dark room conditions, meaning the display screen illuminance measurement in off mode must be less than or equal to 1.0 lux.

4.3. *Ambient Temperature Conditions.* For all testing, maintain ambient temperature conditions between 23 °C ±5 °C.

4.4. *Ambient Relative Humidity Conditions.* For all testing, maintain the ambient relative humidity between 10 and 80 percent.

4.5. *Input Cable.* Testing shall be performed using an HDMI input cable. If the TV does not have an HDMI input, the following inputs shall be used, in the following order: HDMI/DVI, VGA, component, S-Video, and composite.

4.6. *2D Testing Signal Source.* The signal source shall be able to generate a Blu-ray signal.

5. *Test Measurements.*

5.1. For on mode and luminance testing, connect the signal source generator to the TV via the input cable.

5.2. *Warm-up.* TVs shall be warmed-up prior to testing using the IEC 62087–2011 (incorporated by reference, see § 430.3) dynamic broadcast-content video signal for at least one hour, found in annex C.3 of IEC 62087–2011. If the TV has not reached a stable state with respect to power within the one hour time period, the warm-up shall last until the TV reaches a stable state. For the purposes of this rulemaking, the TV is considered to be in a stable state if the average power consumption over two consecutive plays of IEC 62087–2011 dynamic broadcast-content video signal does not vary by more than 2 percent.

5.3. *Luminance Test.*

5.3.1. *Luminance Test.* The luminance test shall be performed immediately following the warm-up period. The luminance test shall first be performed with the TV in the retail picture setting, followed by the TV in home picture setting. The ABC sensor must be disabled during this test.

5.3.1.1. *LMD Setup.* Align the LMD perpendicular to the center of the display screen. If a distance meter is being used for testing, the LMD shall be at a distance capable of achieving the desired specifications outlined in section 3.1.3.

5.3.1.2. *Three Bar Video Signal Measurement.* The TV shall be measured in both the home and retail picture settings using IEC 62087–2011 (incorporated by reference, see § 430.3) three bar video signal found in section 11.5.5 of IEC 62087–2011. Record the luminance immediately after the three bar video signal is displayed in the retail picture setting first, as $L_{retail,}$ followed by the home picture setting as $L_{home.}$

5.4. *On Mode Test for TVs without ABC Enabled By Default.*

5.4.1. On mode testing shall be performed with the TV in home mode, while displaying the full 10-minute duration of IEC 62087–2011 Blu-ray dynamic-broadcast video signal (incorporated by reference, see § 430.3). Measure the energy consumption and record the value as $P_{on.}$

5.5. *On Mode Test for TVs with ABC Enabled By Default.* The following test shall be performed if the TV is shipped with ABC enabled by default:

5.5.1. On mode testing shall be performed with the TV in home mode, while displaying IEC 62087–2011 Blu-ray dynamic-broadcast video signal for 10 minutes (incorporated by reference, see § 430.3) with l0 lux (±1 lux) entering the ambient light sensor. Measure the energy consumption and record the value as P_{10}. Repeat the measurements with 50 lux (±2 lux), 100 lux (±5 lux), and 300 lux (±9 lux) entering the ambient light sensor and record the values as P_{50}, P_{100}, and P_{300} respectively.

5.5.2. To create the ambient lighting, a halogen incandescent light must be positioned in front of the ABC sensor so that the light may be focused directly into the sensor. The light source must be able to

achieve a range between 10–300 lux at the ABC sensor. The room illuminance shall be measured at the sensor in the direction of the light source while the TV is on and displaying the main menu of IEC 62087–2011.

5.6. *Standby Mode Tests.*

5.6.1. *Standby-Passive Mode Test.* The standby-passive test shall be performed according to section 5.3.1 of IEC 62301–2011 standby test (incorporated by reference, see § 430.3). Measure the energy consumption and record the value as $P_{standby\text{-}passive}$.

5.6.2. *Standby-Active, High Mode Test.* The standby-active, high test shall be performed according to the CEA Test Procedure for Download Acquisition Mode Testing (incorporated by reference, see § 430.3). Measure the energy consumption and record the value as $P_{standby\text{-}active,\ high}$.

5.6.2.1. The standby-active, high test shall be performed using the following inputs, in the following order: Wi-Fi, Ethernet. Ethernet. If the UUT supports an Energy Efficient Ethernet, then it shall be tested using that connection., Thunderbolt, USB, Firewire, and other when more than one connection can be used to conduct testing.

5.7. *Off Mode Test.*

5.7.1. The off mode test shall be performed according to section 5.3.1 of the IEC 62301–2011 off mode test (incorporated by reference, see § 430.3). Measure the energy consumption and record the value as P_{off}.

6. *Calculations.*

6.1. Calculate the Luminance ratio, L, as the ratio of L_{home} to L_{retail}.

[FR Doc. 2012–687 Filed 1–18–12; 8:45 am]

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Part IV

Federal Communications Commission

47 CFR Part 73

2010 Quadrennial Regulatory Review; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 09–182 and 07–294; FCC 11–186]

2010 Quadrennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, section 202(h) of the Telecommunications Act of 1996 requires the Commission to review its broadcast ownership rules quadrennially to determine whether these rules are necessary in the public interest as a result of competition. This document solicits comment on proposed changes to the broadcast ownership rules in compliance with this requirement. In addition, this document solicits comment on certain aspects of the Commission's 2008 *Diversity Order* that the U.S. Court of Appeals for the Third Circuit remanded and directed the Commission to address in this proceeding. This document solicits comment also on potential changes to the Commission's broadcast attribution rules.

DATES: The Commission must receive written comments on or before March 5, 2012 and reply comments on or before April 3, 2012. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before March 19, 2012.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167.

FOR FURTHER INFORMATION CONTACT: Hillary DeNigro, Industry Analysis Division, Media Bureau, FCC, (202) 418–2330. For additional information concerning the PRA proposed information collection requirements contained in the *Notice of Proposed Rulemaking,* contact Cathy Williams at (202) 418–2918, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This *Notice of Proposed Rulemaking,* in MB Docket Nos. 09–182; 07–294, FCC 11–186, was adopted and released on December 22, 2011. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Washington, DC 20054. Customers may contact BCPI, Inc. at their Web site *http://www.bcpi.com* or call 1–(800) 378–3160.

Initial Paperwork Reduction Act of 1995 Analysis

This *Notice of Proposed Rule Making* may result in a new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

I. Synopsis of the Notice of Proposed Rulemaking

A. Introduction

1. Pursuant to a statutory mandate under the Telecommunications Act of 1996, the Commission seeks comment in this *Notice of Proposed Rulemaking* on the Commission's media ownership rules and proposed changes thereto. The Commission is required by statute to review its media ownership rules every four years to determine whether they ''are necessary in the public interest as the result of competition.'' A challenge in this proceeding is to take account of new technologies and changing marketplace conditions while ensuring that the media ownership rules continue to serve the Commission's public interest goals of competition, localism, and diversity. The Commission is also seeking comment on economic studies analyzing the relationship between local media market structure and the policy goals that underlie the Commission's media ownership rules. In addition, the Commission seeks comment in this proceeding on the aspects of the Commission's 2008 *Diversity Order* (73 FR 28361, May 16, 2008, FCC 07–217, rel. Mar. 5, 2008) that the Third Circuit remanded in *Prometheus Radio Project* v. *FCC* (*Prometheus II*).

2. The proliferation of broadband Internet and other new technologies has had a dramatic impact on the media marketplace. Consumers are increasingly turning to online and mobile platforms to access news content and audio and video programming. For example, in 2010 and in the first quarter of 2011, satellite radio and TV companies, which offer both satellite and online access to content, have reported growth in subscribership. Similarly, content providers are increasingly looking to the Internet and other new media platforms to bypass traditional media and reach consumers directly. Social media sites are empowering individuals to share news and information in real time, becoming tools of social interaction and revolution throughout the world.

3. For the broadcast and newspaper industries, the growth of these new technologies both challenges established business models and provides opportunities to reach new audiences and generate new revenue streams. Broadcast and newspaper consumption in traditional forms is in decline, and advertising revenues have been shrinking in recent years. Some broadcast and newspaper outlets have contracted the size of news staffs in response. These economic realities have sounded an alarm for some who are concerned that non-traditional media sources are not adequate substitutes for the provision of local news and information by broadcasters subject to public interest obligations. In voicing such concerns, some commenters have asserted that the Commission's media ownership limitations remain vitally important, as increased consolidation places control of programming choices in the hands of too few owners, limiting diversity and underserving the needs of local and minority communities.

4. In short, the media marketplace is in transition, particularly as a result of broadband Internet; but new media are not yet available as ubiquitously as traditional broadcast media. The nation has not yet reached universal deployment or adoption of broadband. Too much of the country is unserved or underserved by broadband, and the average broadband speed available to consumers varies in different areas and lags behind some other nations. Broadband adoption remains under 70 percent, meaning that tens of millions of Americans do not have access to news and other programming on the Internet.

Some parts of the population, including minorities, people with disabilities, and low-income Americans, have much lower rates of broadband adoption. Access to sufficient broadband speeds is critical for consumers to take full advantage of today's online programming and applications, including access to media content through streaming technology and downloading programs. According to one estimate, more than 14 million Americans do not have access to broadband infrastructure that can support today's applications. Much of the content available by streaming and downloads requires minimum broadband speeds. The Commission is taking important steps to close this digital divide, but much work remains.

5. The Commission began this proceeding with a series of workshops held from November 2009 through May 2010. Participants in the workshops discussed the scope and content of the review process. Thereafter the Commission released a *Notice of Inquiry* (75 FR 33227, June 11, 2010, FCC 10–92, rel. May 25, 2010) (*NOI*) on May 25, 2010, seeking comment on a wide range of issues to help us determine whether the current media ownership rules continue to serve the Commission's policy goals. The *NOI* sought input on developments in the marketplace since the last review and on whether the Commission should adopt alternatives to bright-line, sector-specific rules. It also sought comment on the Commission's fundamental goals of competition, localism, and diversity and how to balance these goals when they conflict. In response, industry participants and representatives, public interest groups, and members of the public filed a significant number of comments.

6. To provide data on the impact of market structure on the Commission's policy goals of competition, localism, and diversity, the Commission commissioned eleven economic studies, which were conducted by outside researchers and Commission staff. The Commission previously released the studies to allow parties additional time to review the data and analyses and now is seeking formal comment on them herein. As discussed herein, the Commission reaffirms that its media ownership rules are necessary to further the Commission's longstanding policy goals of fostering competition, localism, and diversity. In particular, the Commission reaffirms that a major goal of the rules is to encourage the provision of local news, and the Commission invites suggestions about how that goal can be further achieved.

7. In *Prometheus II,* the Court of Appeals for the Third Circuit considered appeals of the Commission's review of the media ownership rules in the *2006 Quadrennial Review Order* (73 FR 9481, February 21, 2008, FCC 07–216, rel. Feb. 4, 2008). As discussed in more detail below, the court affirmed the Commission's decision to retain the local television and radio rules to protect competition in local media markets. The court also affirmed the Commission's decision to retain the dual network rule based on potential harm to competition that would result from mergers of the top four networks. The court also affirmed the Commission's conclusion to retain the radio/television cross-ownership rule as well as, in part, to retain the local radio rule based on the benefits to the Commission's diversity goal. Moreover, the Third Circuit vacated and remanded the newspaper/broadcast cross-ownership rule as modified by the Commission in the *2006 Quadrennial Review Order,* concluding that the Commission failed to comply with the notice and comment provisions of the Administrative Procedures Act. As discussed in more detail below, the court also vacated and remanded a number of measures adopted in the Commission's 2008 *Diversity Order,* which the Commission now addresses in this proceeding.

8. As discussed in detail herein, as part of its regular review of broadcast ownership rules required by the Communications Act, the Commission proposes the elimination of one rule and suggests leaving the others largely unchanged. The Commission believes that the public interest is best served by these modest, incremental changes to the Commission's rules. Recognizing current market realities, the Commission seek comment on the following proposals:

- *Local Television Ownership Rule.* The Commission tentatively concludes that it should retain the current local television ownership rule with minor modifications. Specifically, the Commission proposes to eliminate the Grade B contour overlap provision of the current rule. The Commission tentatively concludes that it should retain the prohibition against mergers among the top-four-rated stations, the eight-voices test, and the existing numerical limits. In addition, the Commission seeks comment on whether to adopt a waiver standard applicable to small markets, as well as appropriate criteria for any such standard. Also, the Commission seeks comment on whether multicasting should be a factor in determining the television ownership limits.
- *Local Radio Ownership Rule.* The Commission proposes to retain the current local radio ownership rule. The Commission also seeks comment on modifications to the rule and whether and how the rule should account for other audio platforms. The Commission proposes to also retain the AM/FM subcaps, and seeks comment on the impact of the introduction of digital radio. The Commission seeks comment on whether to adopt a waiver standard and on specific criteria to adopt.
- *Newspaper/Broadcast Cross-Ownership Rule.* The Commission tentatively concludes that some newspaper/broadcast cross-ownership restrictions continue to be necessary to protect and promote viewpoint diversity. The Commission proposes to use Nielsen Designated Market Area (DMA) definitions to determine the relevant market area for television stations, given the lack of a digital equivalent to the analog Grade A service contour. The Commission proposes to adopt a rule that includes elements of the 2006 rule, including the top 20 DMA demarcation point, the top-four television station restriction, and the eight remaining voices test. The Commission seeks comment on these proposals and whether to incorporate other specific elements and factors of the 2006 rule.
- *Radio/Television Cross-Ownership Rule.* The Commission proposes to eliminate the radio/television cross-ownership rule in favor of reliance on the local radio rule and local television rule. The Commission believes that the local radio and television ownership rules adequately protect the Commission's localism and diversity goals and seeks comment on this proposal.
- *Dual Network Rule.* The Commission tentatively concludes that the dual network rule remains necessary in the public interest to promote competition and localism and should be retained without modification.

9. *Minority and Female Ownership.* As noted above, the Commission seeks comment in this proceeding on the aspects of the Commission's 2008 *Diversity Order* that the Third Circuit remanded in *Prometheus II.* Specifically, the court vacated and remanded a number of measures adopted in the *Diversity Order* that were designed to increase ownership opportunities for ''eligible entities,'' including minority- and women-owned entities, because it determined that the Commission's revenue-based eligible entity definition was arbitrary and

capricious. The court directed the Commission to address this issue in the course of the 2010 Quadrennial Review. As directed by the court, the Commission invites views on how its ownership rules and policies can promote greater minority and women ownership of broadcast stations. The Commission will explore a broad range of potential actions it might take to that end, consistent with judicial precedent.

B. Policy Goals

10. The Commission reaffirms that media ownership rules are necessary to further the Commission's longstanding policy goals of fostering competition, localism, and diversity. In the *NOI,* the Commission sought comment on how these goals should be defined and measured and on whether there are additional goals the Commission should consider. The Commission did not receive many specific comments on defining, measuring, and evaluating the performance of the Commission's policy goals, and the Commission invites such comment again. In particular, the Commission describes and seeks comment below on the Commission's 11 Media Ownership studies that evaluate the impact of local media market structure on the Commission's policy goals. In addition, the Commission invites parties to submit their own studies evaluating the impact of particular market structures on the Commission's goals. Below, the Commission discusses its competition, localism, diversity, and other policy goals. The Commission also discusses how it should evaluate the costs and benefits of the media ownership rules.

11. *Competition.* As the Commission noted in the *NOI,* because broadcast content is available for free to end users, broadcast competition cannot be assessed in the same manner as in many other markets. Specifically, the Commission cannot examine changes in price to assess the impact of different levels of ownership concentration. Accordingly, the Commission sought comment on a variety of potential ways to assess competition in the media marketplace. The Commission discussed whether competition among broadcast outlets is likely to benefit consumers by making available programming that satisfies consumer preferences.

12. The Commission reaffirms its longstanding commitment to ensure that media markets are competitive. The Commission strives to set ownership rules that create a marketplace in which broadcast programming meets the needs of consumers, and the Commission believes competition is a key means to that end. Moreover, the Commission reaffirms the Commission's previous findings that the local ownership rules should be analyzed in the context of local markets. The Commission finds however that for the Dual Network rule, competition is appropriately analyzed in the national advertising and programming markets.

13. *Localism.* In the *NOI,* the Commission sought comment generally on how to define and promote localism in the context of the media ownership rules, including whether its traditional localism goal needs to be redefined in light of today's media marketplace.

14. The Commission reaffirms its commitment to promote localism through the media ownership rules. At its core, localism policy is ''designed to ensure that each station treats the significant needs and issues of the community that it is licensed to serve with the programming that it offers.'' The media ownership rules, as part of the Commission's overall regulatory framework, seek to promote a marketplace in which broadcast stations ''respond to the unique concerns and interests of the audiences within the stations' respective service areas.'' The Commission continues to evaluate the extent of localism in broadcasting markets by determining whether programming is responsive to local needs and interests. The Commission's focus continues to be on news and public information programming. The Commission continues to believe that these types of programming are relevant to evaluating the extent of localism as it exists in local markets. While the Commission's core commitment to promoting localism in media remains undiminished, the Commission also recognizes that changes in the marketplace and changes in consumer preferences may impact aspects of localism in today's marketplace. Thus, the Commission believes that the appropriate definition of localism today, in the digital age, may not be the same definition as in decades past.

15. As a result of the growing availability of the Internet and the proliferation of wireless technology, consumers are accessing news and public affairs programming through their computers and electronic devices. Moreover, the potential for hyper-local Web sites and blogs to provide consumers with local news and information, such as neighborhood-specific news and events, may contribute to meeting the current or future needs and interests of local communities. As consumers continue to rely more and more on additional, multiple sources of local news, the Commission seeks comment on whether, and how, to reevaluate localism to account for changes in the way consumers get local news.

16. *Diversity.* In the *NOI,* the Commission sought comment on how to define and measure diversity in today's marketplace to determine whether the current media ownership rules are meeting the Commission's diversity goal. The Commission has relied on its media ownership rules to ensure that diverse viewpoints and perspectives are available to the American people in the content they receive over the broadcast airwaves. The policy is premised on the First Amendment, which ''rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.'' The Commission historically has approached the diversity goal from five perspectives: viewpoint, outlet, program, source, and minority and female ownership diversity. In the *2002 Biennial Review Order* (68 FR 46286, August 5, 2003, FCC 03–127, rel. July 2, 2003), the Commission concluded that program diversity is best achieved by reliance on competition among delivery systems rather than by government regulation and that the media ownership rules ensure competition in local markets. In addition, the Commission concluded that source diversity was not one of the diversity goal objectives of the media ownership rules. The Commission reaffirms those conclusions. The Commission has regulated media ownership as a means of enhancing viewpoint diversity based on the premise that diffuse ownership among media outlets promotes the presentation of a larger number of viewpoints in broadcast content than would be available in the case of a more concentrated ownership structure. The Commission previously has discussed two schools of thought on the relationship between ownership and diversity. On one side is the notion that the more independently owned outlets there are, the greater the viewpoint diversity. The concept is that 51 station owners will provide more diverse viewpoints than 50 station owners. The second school of thought is that concentrated ownership will provide an opportunity for diverse content. According to this view, an owner of multiple stations in a local market will provide a variety of programming and viewpoints in order to gain the widest audience and market share. It can be questioned whether the latter approach is as likely to provide the public with information from ''diverse and

antagonistic sources.'' The Commission seeks comment on this issue and on how the Commission should account for this aspect of its diversity goal in any rules the Commission might adopt.

17. The Commission reaffirms its belief that media ownership limits are necessary to preserve and promote viewpoint diversity. Furthermore, the Commission also reaffirms its conclusion that viewpoint diversity is generally promoted by competition among independently owned media outlets. The Commission believes that a key measure of how well the Commission's current rules promote the Commission's overall diversity goal is the availability of local news and information, and the Commission examines that availability herein as it relates to local ownership structure and the level of civil engagement.

18. *Minority and Female Ownership.* In the *NOI,* the Commission sought comment on a variety of questions regarding the impact of the ownership rules on minorities and females, including minority and female ownership of broadcast stations. The Commission asked how its localism goal should be defined and measured as applied to historically underserved minority communities. The Commission sought comment on what aspects of localism are most relevant specifically to minority communities, as well as on the effect of consolidated ownership on the availability of a variety of diverse viewpoints to women and minority consumers. The *NOI* asked if women and minorities are increasing their ownership shares in companies that are content providers or in other aspects of media production aside from station ownership.

19. There were only limited comments on these issues. According to Diversity and Competition Supporters (DCS), significant barriers to entry for minority ownership remain in both the traditional and new media industries. DCS states that minority-owned stations are more likely than non-minority owned stations to provide programming geared toward minority audiences and that minority communities are underserved as a result of the lack of minority media ownership. DCS supports measures that facilitate minority media ownership.

20. The Commission tentatively concludes that its policy goals of competition, localism, and diversity are the appropriate framework within which to evaluate and address minority and female interests as they relate to the media ownership rules. The Commission seeks comment on this tentative conclusion. The Commission also seeks additional comment on how the proposed framework for each of the media ownership rules, as explained herein, would affect minority and female ownership opportunities.

21. *Additional Policy Goals.* In the *NOI,* the Commission sought comment on whether it should consider any other formal policy goals, in addition to the Commission's competition, diversity, and localism goals, in determining ownership limits in this proceeding. Specifically, the Commission sought comment on whether to consider the impact of the media ownership rules on the availability to all Americans of news and information, including national news and information. The Commission also sought comment on whether it should consider the impact of its rules on investigative journalism, and whether any specific aspects of the National Broadband Plan, including issues related to broadband access, are relevant to the media ownership rules. The Commission tentatively concludes not to adopt any other formal policy goals in this proceeding. As described above, the Commission's longstanding policy goals of competition, localism, and diversity are broadly defined to promote the core responsibilities of broadcast licensees. The Commission notes that its media ownership rules seek to further consumer welfare by promoting the availability of community-responsive news and public affairs programming from a variety of sources. The Commission seeks comment on its tentative conclusion not to adopt any policy goals other than competition, localism, and diversity in this proceeding.

22. *Balancing the Costs and Benefits of Limiting Media Combinations.* The Commission seeks information that will help it balance the positive benefits of the ownership limits in promoting the Commission's policy goals against the costs that specific limits may impose on consumers and firms. The Commission has discussed in broad terms in this section the policy goals it seeks to promote. Section V of the *Notice of Proposed Rulemaking* presents the studies that the Commission commissioned to quantify the influence of the Commission's rules on the policy goals. In particular, Media Ownership Study 2 quantifies the benefits and costs of particular media market structures on consumers. The Commission seeks comment on the appropriate use of this study in quantifying the impact of the media ownership rules on consumers and balancing the positive effects on consumers with any adverse effects on firms.

23. The Commission's studies do not address the direct impact ownership limits have on media outlets. The Commission seeks detailed information on the benefits that would accrue to media outlets from entering into combinations that currently are impermissible. What are the cost-savings associated with a combination of two TV stations in markets where duopolies are not currently permitted? What are the sources of those cost savings? Are the savings a one-time event or are they recurring? Do they vary by the size of the market or the popularity of the TV station? The Commission seeks similar detailed estimates of cost savings for the combination of radio stations as well as cross-media combinations between newspapers, TV stations, and radio stations. Commenters should document to the extent possible the sources and methods of their estimates.

24. How should the Commission balance the effects of its rules on consumers with those on firms, in particular, media outlets? Should each receive equal weight? How should the Commission account for situations in which the costs and the benefits of a change in the rules occur at different points in time? The Commission encourages commenters to provide examples of the suggested balancing of the Commission's rules.

C. Media Ownership Rule Proposals

1. Local Television Ownership Rule

a. Introduction

25. As discussed in the *NOI,* in the *2006 Quadrennial Review Order,* the Commission determined that the then long-standing local television ownership rule promotes competition within local television markets. Consistent with this conclusion, the Commission retained that rule. The rule allows an entity to own two television stations in the same DMA (duopoly rule) only if there is no Grade B contour overlap between the commonly owned stations, or at least one of the commonly owned stations is not ranked among the top-four stations in the market (top-four prohibition) and at least eight independently owned television stations remain in the DMA after ownership of the two stations is combined (eight-voices test). The court in *Prometheus II* upheld the Commission's decision in the *2006 Quadrennial Order* to retain the local television ownership rule, specifically concluding that the Commission was justified in retaining the top-four prohibition, the eight-voices test, and the duopoly rule.

26. Based on the record in this proceeding, the Commission tentatively concludes that the local television ownership rule, with certain modifications discussed below, remains necessary in the public interest as a result of competition. The Commission tentatively agrees with the Commission's previous determination that the local television ownership rule is necessary to promote competition. While the Commission proposes to adopt a local television ownership rule to advance its competition goal, the Commission seeks comment on whether the proposed rule also is necessary to promote the Commission's localism and viewpoint diversity goals.

27. As discussed in greater detail below, the Commission proposes to eliminate the Grade B contour overlap provision of the current rule and seek comment on this proposal. The Commission tentatively concludes that it should retain the prohibition against mergers among the top-four-rated stations. The Commission proposes to also retain the eight-voices test and the existing numerical limits, but seek comment on whether modifications to either the voice test or numerical limits is warranted. In addition, the Commission seeks comment on whether to adopt a waiver standard applicable to small markets, as well as appropriate criteria for any such standard. Also, the Commission seeks comment on whether and how the digital transition and multicasting may impact television ownership limitations. Finally, the Commission seeks comment on the impact of the proposed rule on minority and female ownership.

b. Background

28. In the *NOI,* the Commission sought comment on whether to retain the current rule, including the eight-voices test, the top-four prohibition, and the contour overlap definition. It also asked whether relaxation of the rule is warranted in small markets to help broadcasters achieve efficiencies sufficient to compete with other video programming providers.

29. Television broadcasters generally support relaxing the local television ownership rule, asserting that they face decreased revenues, as a result of both increased competition from nonbroadcast video programming providers and the recent economic downturn. Broadcasters assert that the efficiencies gained from combined ownership will allow them to compete better in today's changing marketplace. According to broadcasters, common ownership can increase viewpoint diversity, as owners of multiple stations seek to capture the greatest possible audience share by diversifying their news and public interest program offerings among co-owned properties. In addition, they contend that the cost savings generated by common ownership allow stations to add local newscasts and other locally oriented programming.

30. Public advocacy groups, on the other hand, caution the Commission against using current economic conditions as a justification for relaxing the local television ownership rule. UCC *et al.,* for example, assert that every U.S. industry was impacted by the declining economy and that signs suggest that the broadcast television industry has emerged from the downturn. Moreover, they contend that, if certain stations cannot survive in the current economic climate, then the public interest is best served by allowing new entrants to become broadcasters or finding new uses for the broadcast spectrum. In addition, public advocacy groups assert that further consolidation will reduce viewpoint diversity through reductions in female and minority ownership and the loss of independent news operations. Contrary to the broadcasters' assertion, the public advocacy commenters cite to studies that have found that consolidation does not lead to increases in local programming, suggesting that additional consolidation would not serve the Commission's localism goal.

31. In the media ownership studies, the Commission sought data to help determine how best to structure a local television ownership rule to satisfy the Commission's policy goals. Particularly relevant to the local television rule, Media Ownership Study 1 examines whether common ownership of stations affects the amount of local news provided by television stations in the local market. The study does not find significant evidence that common ownership affects local media usage or programming. In addition, Media Ownership Study 4 analyzes, at both the market level and the station level, the relationship between media ownership and the amount of local news and public affairs programming provided in a local television market. The study suggests that multiple ownership in a local market does not impact the amount of local information programming at the market level or at the station level. Media Ownership Study 9 provides a theoretical analysis of the impact of media ownership structure on viewpoint diversity, finding that more independent outlets can increase viewpoint diversity in a market.

c. Discussion

32. *Market.* Broadcasters generally assert that they are facing increased competition from new technologies, which has led, at least in part, to a reduction in advertising revenues, which could threaten the financial viability of local television stations. Broadcasters contend, therefore, that the Commission should modify the local television ownership rule to permit increased common ownership in local markets.

33. The Commission proposes that the local television ownership rule continue to focus on promoting competition among broadcast television stations in local television viewing markets. The Commission tentatively concludes that the video programming market is distinct from the radio listening market. The Commission finds that local broadcast television stations compete directly with each other, particularly during the parts of the day in which these stations do not transmit the programming of affiliated broadcast networks. The Commission previously has determined that the video programming market includes both broadcast television stations and cable networks. Moreover, the Commission recognizes that viewers are increasingly able to access current network programming (both broadcast and cable) and an increasing array of video programming alternatives via the Internet, including on mobile devices. However, competition between local television stations and cable networks may be of limited relevance, because national cable networks generally do not alter their programming decisions based on the actions of individual local television stations. Competition in local markets among local television stations and programming alternatives available via the Internet may be similarly limited, as these alternatives compete largely in national markets and are not likely to respond to conditions in local markets. The Commission seeks comment on whether the development of local and hyperlocal Web sites should alter this analysis. The Commission seeks data in support of alternative conclusions, for example, that nonbroadcast video programmers modify programming decisions based on the actions of individual local television stations.

34. The Commission also seeks comment on the impact of alternative video platforms on the continued viability of broadcast television stations. While the growth of MVPDs and Internet delivery of video programming is undeniable, the impact of this growth

on the broadcast television industry is unclear. While broadcast television's share of television viewing has been on the decline, broadcast network programming remains popular. Viewership, however, appears to be fractured between local affiliates, the Internet, and other mobile platforms. Is there evidence that viewers find broadcast television stations to be interchangeable with new technologies, or is broadcast television unique? If it is unique, what characteristics define it as such? Should the Commission determine that, contrary to its tentative conclusion, the local television ownership rule should focus on promoting competition among broadcast television stations and alternatives to broadcast television stations in local markets, the Commission seeks comment below on whether and how to include these alternatives in the rule, either in the eight-voices test or any alternate framework the Commission may adopt for determining whether to permit common ownership in a local market.

35. Moreover, the Commission seeks comment on whether the product market for review of the local television rule should include more than video programming. For instance, some of the alternative sources of locally oriented content, such as Web sites and blogs, may not be entirely in video form. Is the relevant product market expanding from a video-only market to one that also contains non-video sources of local news and information? The Commission tentatively concludes that, although the relevant product market may expand beyond video programming over time, it has not done so at this point. Evidence suggests that, in the aggregate, Internet-only Web sites provide only a small amount of local news content. The Commission has not seen evidence that non-video information sources modify programming decisions based on the actions of local television stations or vice versa. The Commission seeks comment on these tentative conclusions.

36. *Contour Overlap.* The current local television ownership rule employs a Grade B contour overlap test for determining whether to allow common ownership of television stations. The Grade B contour is an analog contour that is no longer relevant now that television stations have completed the digital transition and ceased broadcasting in analog. The Commission sought comment in the *NOI* on whether an overlap provision or some reliance on contours in the local television ownership rule was still necessary or whether the Commission should rely on geographic areas, such as a television DMAs. NAB asserts that the Commission should, to the extent feasible, maintain a contour-based approach for the local television ownership rule. Grant Group asks the Commission to grandfather existing combinations in the event an alternate approach is adopted and to permit the sale of grandfathered combinations to a single party.

37. The Commission believes that eliminating the contour approach is necessary to be consistent with today's marketplace realities. Therefore, the Commission tentatively concludes that it will eliminate the Grade B contour approach and rely solely on Nielsen DMAs. Because of the Commission's mandatory carriage requirements, MVPDs generally will carry all the broadcast stations assigned to the DMA in which they are located. These MVPDs are also likely to carry most major cable networks. Therefore, the DMA most accurately captures the universe of broadcast and MVPD video programming available to viewers. As such, any combination of stations in a particular DMA could have an impact on the levels of competition in that local market. However, the current rule permits certain mergers between stations that compete in the same market simply because of a lack of Grade B contour overlap—a factor that may not have any significant impact on the level of competition between those stations. Therefore, the Commission tentatively concludes that eliminating the contour-overlap requirement in favor of the DMA-based approach would result in a more consistent application of the local television ownership rule. Moreover, the Commission believes that the grandfathering provisions discussed below will preserve existing ownership combinations, thus avoiding disruption of settled expectations and alleviating any negative impact this change could have on the provision of television service in rural areas. The Commission seeks comment on these tentative conclusions.

38. The Commission previously adopted a geographic market definition for the local radio rule. In the radio context, Arbitron Metro market definitions were found to be an industry standard and to represent a reasonable definition of the geographic market within which radio stations compete. Adopting Arbitron Metro markets was found to improve the Commission's ability to preserve and promote competition by more accurately identifying actual geographic markets; more accurately measuring concentration levels in local markets; and providing for a more consistent application of the local radio ownership rule. The Commission has long recognized in the television ownership rule that DMAs are the relevant geographic market in which television stations compete, and the Commission expects that a DMA-based approach here will achieve benefits similar to those found in adopting the Arbitron Metro market standard in the radio context. Finally, unlike Arbitron Metro markets, which do not cover large portions of the United States and its territories, the DMA-based approach covers the entire country and includes all television stations. In instances where a station's community of license is located in one DMA but the station is assigned by Nielsen to another DMA the station will be considered to be within the DMA assigned by Nielsen for purposes of this rule. In addition, Puerto Rico, Guam, and the U.S. Virgin Islands, which are not assigned a DMA by Nielsen, each will be considered a single DMA.

39. The Commission recognizes, however, that a DMA-based approach may disproportionately impact certain DMAs that have unique characteristics. For instance, in a geographically large DMA two stations may be so far removed from one another that the stations do not actually compete over-the-air (though they are both carried by MVPDs throughout the DMA). While the Grade B provision of the existing rule allowed common ownership of those stations, a DMA-based approach could prohibit common ownership. Therefore, the Commission seeks comment on whether and how to accommodate such a situation and other types of situations in which the Grade B provision allowed ownership of stations but a DMA-based rule would prohibit common ownership. The Commission seeks comment on how frequently such situations arise. The Commission tentatively concludes to grandfather ownership of existing combinations of television stations that would exceed the ownership limit under the proposed local television ownership rule by virtue of the change to a DMA-based approach. Compulsory divestiture is disruptive to the industry and a hardship for individual owners, and any benefits to the Commission's policy goals would likely be outweighed by these countervailing considerations. Consistent with the Commission's previous decisions, the Commission seeks comment regarding whether to allow the sale of combinations only if the station groups comply with the local television ownership rule in place at the

time the transfer of control or assignment application is filed. The Commission would continue to allow *pro-forma* changes in ownership and involuntary changes of ownership due to death or legal disability of the licensee. Are the Commission's policy goals served by allowing grandfathered combinations to be freely transferable in perpetuity, irrespective of whether the combination complies with the local television ownership rule? What is the effect on the stations if they are sold separately? Is it possible that such a rule could have the unintended consequence of causing a station to close? The Commission seeks comment on these tentative conclusions.

40. *Top-Four Prohibition.* The top-four prohibition prevents mergers between two of the top-four-rated stations in a local market, subject to the other provisions of the local television ownership rule. In the previous media ownership proceeding, the Commission retained the top-four prohibition because mergers between these stations ''would be the most deleterious to competition.'' Such mergers would often result in a single firm obtaining a significantly larger market share than other firms in the market and would reduce incentives for local stations to improve programming that appeals to mass audiences. The Commission also found that a significant ''cushion'' of audience share continued to separate the top-four stations from the fifth-ranked station. The Commission also found that mergers involving two top-four stations would harm competition in the local broadcast television advertising market. The Commission tentatively concludes that this market does not have a direct impact on consumers and should not be a focus of the Commission's inquiry. The Commission seeks comment on these tentative conclusions. The Commission tentatively concludes that retaining the top-four prohibition is necessary to promote competition for the reasons set forth in the *2006 Quadrennial Review Order.* The Commission continues to believe that this rationale supports retention of the top-four prohibition, and the Commission seeks comment on these tentative conclusions.

41. The Commission seeks comment also on the impact of the top-four prohibition on its localism goal. NAB supports mergers among the top-four stations in a local market because it argues that many of these stations cannot afford to produce local news independently. Allowing these stations to combine, they argue, could lead to increased news offerings. The Commission notes, however, that evidence suggests that the majority of top-four stations are already originating substantial amounts of local news. Moreover, there is generally a drop off between the fourth- and fifth-rated station in the market in the amount of local news broadcast. Based on this evidence, it is not clear that permitting mergers among top-four stations generally would result in additional local news or other local programming. The Commission seeks comment on these issues. The Commission also seeks information regarding whether the amount of local news provided between the top four stations and any others depends upon the size of the market and a community's ability to support multiple news outlets. As discussed in greater detail below, with respect to a potential waiver standard applicable to small markets, the Commission seeks comment on whether permitting common ownership in small markets, even between top-four stations, would promote additional local news.

42. In addition, the Commission seeks comment on whether it should retain the top-four prohibition to also promote the Commission's viewpoint diversity goal. Media Ownership Study 9's theoretical analysis shows that a market structure with four firms—two firms presenting each viewpoint—provides efficient information transmission, and the experimental work confirms the value of competition among outlets with similar viewpoints. Although the Commission recognizes the limitations of this finding for the Commission's analysis, since a top-four prohibition does not guarantee the theoretical result, Media Ownership Study 9 provides some support for maintaining at least four strong independent outlets. Furthermore, the Commission recognizes that, in some instances, there may be other significant sources of viewpoint diversity in a market (*e.g.,* local newspapers or local radio stations). Nonetheless, because evidence suggests a link between more independent television outlets and increased viewpoint diversity in a market and given the significance of television as a source of local news and information, retaining the top-four prohibition should advance the Commission's viewpoint diversity goal. The Commission seeks comment on Media Ownership Study 9's findings, as well has how the top-four prohibition impacts the Commission's viewpoint diversity goal.

43. Furthermore, the Commission invites commenters to provide evidence demonstrating why a different criterion might be more appropriate. For example, would it be more appropriate to impose a top-five or the top-six prohibition in all markets or in certain markets? If so, why?

44. Unlike the other ownership rules discussed here, the top-four component of the Commission's local television ownership rule relies on the in-market ranking of the stations to be commonly owned, and this is subject to change over time. Accordingly, the rule specifies that the ranks of the stations are to be determined ''[a]t the time of application to acquire or construct the station(s) * * *.'' If, at that time, both stations are ranked among the top-four stations in the market, common ownership would not be permitted. The Commission's local television ownership rule intends, then, to prohibit an entity from acquiring two top-four stations. However, a broadcaster that owns two television stations located in the same market will not be required to divest a station ''if the two merged stations subsequently are both ranked among the top four stations in the market.'' The Commission adopted this approach to encourage licensees to improve the quality of the programming and operations of their stations and so not to constrain commercial activity that is designed to effect such improvements.

45. The point of applicability of the top-four prohibition at the time of an application to the Commission creates a potential for evading the intent of the rule. Accordingly, the Commission seeks comment on whether and, if so, how it should address circumstances in which a licensee obtains two in-market stations, both of which are ranked among the top-four stations in the market through agreements that may be considered the functional equivalent of a transfer of control or assignment of license in the context of this rule, but that do not require an application or prior Commission approval. For example, an existing licensee with two stations, one of which is among the top four stations in the market, purchases the network affiliation of another top-four-ranked market station and airs that network's programming on its second, lower-ranked station. The licensees party to this transaction also exchange call signs. As a consequence, the second, lower-ranked station becomes a top-four-ranked station and the licensee now controls two top-four-ranked stations in the market, but no application has been filed and none was required. How, if at all, should the Commission address such circumstances? Should the Commission amend the top-four prohibition to apply to these types of transactions? Should the Commission focus on instances

where licensees swap network affiliations, regardless of whether other types of agreements that impact station operation are also executed? How, if at all, should the Commission address situations where a network offers an existing duopoly owner (one top-four station and one station ranked outside the top four) a top-four-rated affiliation for the lower-rated station, perhaps because the network is no longer satisfied with the existing affiliate station and the duopoly owner has demonstrated superior station operation (*i.e.,* earned the affiliation on merit)? Does such a transaction undermine the Commission's local ownership rules or goals? If so, how would the Commission craft a rule to address such circumstances, while at the same time not unduly constraining beneficial commercial activities?

46. *Eight-Voices Test.* Under the eight-voices test, a merger between two in-market stations will not be permitted unless there are at least eight independently owned commercial and noncommercial televisions stations remaining in the market post merger, subject also to the top-four prohibition. The Commission, in the previous media ownership proceeding, determined that it was necessary to retain the eight-voices test in order to promote competition. Specifically, the Commission determined that maintaining a minimum of eight independently owned-and-operated television stations in a market would ensure that each market includes the four major networks (*i.e.,* ABC, NBC, CBS, and Fox) and four independent competitors, and thus would spur competition in program offerings, including local news and public affairs programming. The Commission found that maintaining four independent competitors was necessary to offset the competitive advantage generally held by the top four stations in a market. In addition, the Commission continued to count only full-power television stations as voices ''because the local television ownership rule is designed to preserve competition in the local television market.'' The Commission proposes to retain the eight-voices test for the reasons set forth in the *2006 Quadrennial Review Order* and seeks comment on this proposal. The Commission notes that the current eight-voices test relies on Grade B contour overlap to determine whether a voice is counted. Consistent with the Commission's decision to eliminate the Grade B contour overlap provision from the local television ownership rule, the Commission proposes to also eliminate the Grade B contour overlap criterion from the eight-voices test and rely instead on stations' inclusion in the same DMA as a basis for applying the rule. The Commission seeks comment on this proposal. Do any changes in the television marketplace warrant modification of the eight-voices test? For example, would adopting a six- or seven-voices test better promote the Commission's competition goal while allowing for additional common ownership?

47. Though the Commission proposes to retain the eight-voices test, including the decision to exclude nonbroadcast television media from the voice count, in the event the Commission determines it is appropriate to consider alternative sources of video programming in the local television ownership rule, the Commission seeks comment specifically on whether market conditions have changed since the 2006 quadrennial proceeding such that the Commission should consider alternative sources of video programming in the voice count. If the Commission should consider additional sources of video programming, how should the Commission account for those sources in the local market? Should noncommercial stations be included in figuring out the number of voices in the market? Or should the Commission consider as an additional voice video programming delivered via MVPDs or Internet video programming if such programming is available to a certain portion of the local market? If so, what should the threshold be and what source or sources of data should the Commission rely on in determining whether the threshold is met? Should the Commission consider adoption rates? Should the Commission consider, and if so how, the local or non-local nature of the voice?

48. As an alternative to the eight-voices test, the Commission seeks comment on whether to adopt a different framework for determining whether to permit common ownership in a local market. For example, the Commission could adopt a tiered approach, similar to the local radio ownership rule, in which numerical ownership limits are based on market rankings, such as the number of full-power television stations in the DMA or the Nielsen DMA rank (based on television households). As discussed below, the Commission tentatively proposes to retain the duopoly rule; therefore, any tiered approach the Commission may adopt would be limited to two tiers (*i.e.,* markets where an entity could own up to two stations and markets where an entity could own only one station). Under such a tiered approach, how should the Commission determine the number of stations/Nielsen DMA rank associated with each tier? Do markets with similar numbers of television stations share particular characteristics and, if so, what are those characteristics? Do DMAs of a similar Nielsen rank share certain characteristics even though there may be a significant difference in the number of television stations? For example, the Commission has previously determined that the top 20 DMAs are more vibrant and have more media outlets than lower-ranked DMAs. What would be the benefits and/or drawbacks of such an approach in the television ownership rule?

49. If the Commission were to adopt an approach other than the eight-voices test and determine that it is appropriate to consider alternative sources of video programming, should the Commission include alternative sources of video programming in the new test, and, if so, how? For example, could video programming delivered via MVPDs or the Internet be considered an additional market participant (*i.e.,* the same as an additional broadcast television station) so long as a certain portion of the market has access to one or more of these services? In that case, what should that threshold be and what source or sources of data should the Commission rely on in determining whether the threshold is met? Should adoption also be considered? If the Commission were to rely on Nielsen DMA rank, how would the Commission incorporate these alternative sources into the rule, as Nielsen's ranking system does not take such sources into account? Do DMAs of a certain size share certain characteristics with respect to deployment and adoption of MVPDs and broadband Internet service?

50. *Numerical Limits.* Under the current rule, a licensee can own up to two stations (*i.e.,* a duopoly) in a market, subject to the requirements discussed above. The Commission concluded in the *2006 Quadrennial Review Order* that the duopoly rule remained necessary in the public interest to protect competition despite the increase in media outlets within the last decade. The Commission also declined to tighten the ownership limits, finding that the potential significant benefits from joint ownership permitted under the current rule outweighed claims of harm to diversity and competition.

51. The Commission proposes to retain the current numerical limits. Based on the record in this proceeding, the Commission has not observed

sufficient changes in the marketplace to allow an entity to own more than two television stations in a local market. Moreover, the Commission notes that not every licensee owns the maximum number of stations permissible under the existing duopoly rule. Therefore, if the owner of a single station (or, singleton) believes the potential benefits of common ownership are necessary to compete effectively in a market where additional duopolies are permitted; there are opportunities to combine with other singletons under the existing rule. In addition, the Commission does not believe that the record in this proceeding supports limiting ownership to a single station in all local television markets. The Commission seeks comment on these tentative conclusions. For example, is there evidence that the current rule has produced actual harms to the Commission's policy goals such that tightening the numerical ownership limits would be justified? Alternatively, is there evidence that existing duopolies in the largest markets require additional common ownership to compete effectively, or that there are additional benefits in allowing existing duopolies to acquire additional stations?

52. *Market Size Waivers.* Commenters have raised concerns that prohibiting all mergers in small markets could prevent broadcasters in these markets that may be facing severe competitive pressures from realizing potential efficiencies that could be achieved through allowing common ownership, even of top-rated stations, which could in turn promote the Commission's fundamental policy goals. Therefore, the Commission seeks comment on whether it should adopt a waiver standard for stations in markets where the proposed rule would limit station ownership to a single station for all licensees in the market and how such a standard would affect the Commission's policy goals. In the event the Commission determines such a waiver standard is appropriate, the Commission seeks comment below on how such a standard should be structured.

53. The Commission seeks comment specifically on whether allowing certain combinations in small markets, even between top-four stations, would promote additional local news. The Local TV Coalition asserts that outside of the largest markets often only a few dominant stations can afford an independent news operation because stations in these markets earn less revenue than stations in large markets. Sainte Sepulveda, which owns one station in a small market and entered into sharing agreements with another in-market station, asserts that the savings generated by these sharing agreements are insufficient to implement a local newsgathering and production facility. According to NAB, stations in small markets are earning less profit than stations in large markets. In addition, NAB provides data that stations in small- and medium- sized markets spend less on their news operations than stations in large markets both in absolute terms and as a percentage of total station budget. NAB also submits data demonstrating that these stations provide less local news content and devote less station staff to news production than stations in large markets. The Commission seeks comment on whether adopting a waiver standard for small markets would promote more news offerings in these markets. In particular, the Commission notes that there is some evidence to suggest that markets with six or fewer stations may be less able to support four local television news operations. Should a market size waiver standard take this information into account? Would allowing mergers under this proposed standard result in a loss of viewpoint diversity in those markets? If so, would such mergers produce sufficient gains in competition and/or localism to overcome the reduction in viewpoint diversity?

54. The Commission requests comment also on the criteria it should adopt for any market size waiver standard. Should the Commission adopt some or all of the current failed/failing station waiver policy? What financial documentation should the Commission require? Alternatively, should the Commission adopt a standard based simply on structural considerations—the size of the market and the number of outlets? For example, should the Commission permit a combination if the number of independent media owners in the market post merger would be at least two or three? If so, what independent media owners should the Commission consider? Would this approach create a race to merge that would reward the first to do so and foreclose other market stations from achieving similar competitive advantages? Should the Commission consider the combined market share of the stations seeking to combine ownership? For example, should one of the criteria for a waiver be that the proposed station combination would not exceed a certain percent of the audience or revenue share in the local market? Should the Commission require the applicants to make affirmative commitments to initiate/increase local news offerings? If so, should the Commission require the station owner to demonstrate compliance with that commitment and for how long? Should the Commission adopt specific penalties for noncompliance? What other factors should the Commission consider?

55. Finally, should the Commission consider alternative definitions of the markets in which this waiver approach would apply? For example, should the Commission adopt a less restrictive definition of those ''small markets'' in which the rule would apply, perhaps by including those markets where a single duopoly would be permitted under the proposed rule? The Commission invites comment on whether these markets might benefit if top-four combinations were permitted, with some restrictions, so that sufficient critical mass could be achieved to support more and/or better local news and public affairs programming. For example, it may be that in such markets the top four stations do not all produce local news and that only two or three news operations could be supported by the market. In these circumstances, should the Commission consider permitting mergers among top-four stations but not between the number one and number two stations, or some variant thereof, if such an outcome would increase the quantity and quality of local programming provided? The Commission seeks comment on this approach and on the practical components of any rules to govern such situations.

56. *Multicasting.* The digital television transition was completed on June 12, 2009. As a result, all full-power television stations are now broadcasting in digital and have the ability to use their available spectrum to broadcast not only their main program stream but also, if they choose, additional program streams, an activity commonly referred to as multicasting. UCC *et al.* argue that the ability to multicast justifies a return to the Commission's previous single-station rule. According to UCC *et al.,* multicasting allows broadcast stations to provide multiple program streams without acquiring an additional in-market station. Furthermore, Time Warner Cable (TWC) argues that multicasting permits stations to create ''virtual duopolies'' by affiliating with multiple networks and multicasting their programming. TWC identified a report asserting that 68 instance of dual affiliation exist that involve the Big Four networks. On the other hand, Belo and NAB argue that multicasting is not a substitute for duopoly ownership and does not justify retaining or tightening the local television ownership rule.

They note that multicast channels have difficulty attracting advertisers because these channels are not entitled to must-carry rights and typically lack established programming line-ups. Furthermore, not all stations will elect to air multiple program streams, instead using the available spectrum to provide mobile video, high-quality, high-definition (HD) programming, or other innovative services.

57. With the digital transition complete, the Commission seeks comment on whether the transition has eliminated the need for the local television ownership rule to permit common ownership in local television markets. Specifically, does multicasting replicate the potential benefits to station owners and viewers associated with owning a second in-market station (*e.g.,* efficiency gains and improved programming) or are there benefits unique to common ownership that cannot be replicated by multicasting? If the Commission finds that multicasting does replicate the potential benefits of common ownership, both to station owners and viewers, should the Commission continue to permit common ownership? Should the Commission limit the ability of station owners to form dual affiliations involving certain networks? The Commission seeks comment on specific instances of dual affiliation and on how such situations have impacted the markets where they occur. The Commission notes that broadcasters are not required to use their additional spectrum to multicast, and that some stations will instead elect to use their additional spectrum to offer other services (*e.g.,* mobile video). How, if at all, should that affect the Commission's decision regarding whether multicasting justifies a tightening of the duopoly rule? The Commission also seeks comment on how multicasting is affecting stations in small markets, including specifically whether stations in small markets have been successful in negotiating for MVPD carriage of their subchannels and what revenue and viewer benefits these channels generate. The Commission seeks comment on whether and how to consider multicasting with regard to any waiver standard in small markets.

58. The Commission notes that Media Ownership Study 10, which studies the impact of the ownership rules on multicasting, found some evidence to suggest that variations in ownership structure have little effect on the extent of multicasting. Media Ownership Study 10 finds that other market characteristics, such as market size and the number of television stations operating in a market, may have a greater impact on the extent of multicasting than ownership structure. The Commission seeks comment on the findings of Media Ownership Study 10.

59. *Minority and Female Ownership.* According to DCS, there are still significant barriers to entry by minority owners in both the traditional and new media industries; DCS supports measures to facilitate minority media ownership. DCS states that minority-owned stations are more likely to provide programming geared toward minority audiences and that minority communities are underserved as a result of the lack of minority media ownership. The Commission seeks comment on how the proposed local television rule would affect minority and female ownership opportunities. The Commission seeks comment on how promotion of diverse television ownership promotes viewpoint diversity. The Commission requests commenters to provide additional data supporting their positions.

2. Local Radio Ownership Rule

a. Introduction

60. The Commission has intended the local radio ownership rule to promote competition, diversity, and to some degree localism. The current local radio ownership rule, retained without modification in the previous media ownership proceeding, allows an entity to own: (1) Up to eight commercial radio stations in radio markets with 45 or more radio stations, no more than five of which can be in the same service (AM or FM), (2) up to seven commercial radio stations in radio markets with 30–44 radio stations, no more than four of which can be in the same service (AM or FM), (3) up to six commercial radio stations in radio markets with 15–29 radio stations, no more than four of which can be in the same service (AM or FM), and (4) up to five commercial radio stations in radio markets with 14 or fewer radio stations, no more than three of which can be in the same service (AM or FM), provided that an entity may not own more than 50 percent of the stations in such a market, except that an entity may always own a single AM and single FM station combination. In *Prometheus II,* the Court upheld the Commission's decision in the last media ownership proceeding to retain the local radio ownership rule, specifically concluding that the Commission was justified in retaining the existing numerical limits and the AM/FM subcaps.

61. Based on the record in this proceeding, the Commission tentatively concludes that the current local radio ownership rule remains necessary in the public interest as a result of competition. The Commission tentatively agrees with the previous determination that competition-based radio ownership limits promote viewpoint diversity ''by ensuring a sufficient number of independent radio voices and by preserving a market structure that facilitates and encourages new entry into the local media market.'' The Commission also tentatively agrees with the previous determination that a competitive local radio market helps to promote localism, as a competitive marketplace will lead to the selection of programming that is responsive to the needs and interests of the local community. The Commission seeks comment on these tentative conclusions.

62. As discussed in greater detail below, the Commission tentatively concludes that it should retain the existing numerical ownership limits and market tiers, but still seeks comment on whether to change the existing numerical limits and/or market tiers. The Commission also proposes to retain the AM/FM subcaps, but seeks comment on the impact of the ongoing digital radio transition on the differences between AM and FM stations. In addition, the Commission seeks comment on whether to adopt a specific waiver standard and, if so, what criteria to apply. Finally, the Commission seeks comment on the impact of the local radio ownership rule on minority and female ownership.

b. Background

63. In the *NOI,* the Commission sought comment on whether the current local radio numerical ownership limits are appropriate to achieve the Commission's policy goals and whether to account for other sources of audio programming in the rule.

64. Broadcasters generally support loosening the ownership limits, contending that common ownership of radio stations in the same market does not harm competition, as consolidation has been shown to have no effect on advertising rates. In addition, broadcasters assert that radio stations can, and do, change formats with ease, which they claim should make the possibility of coordinated behavior among owners an insignificant concern to the Commission. Moreover, broadcasters argue that radio ownership limits are not necessary to foster program diversity or localism. According to Clear Channel, econometric analysis from the 2006 quadrennial review shows that group

ownership of radio stations has enhanced diversity of programs and music formats and substantially increased radio broadcasters' ability to serve the local needs and interests of their communities. Clear Channel's econometric analysis relates to the impact of common ownership on format diversity. The Commission has previously ''declined to rely on format diversity to justify the local radio ownership rule.'' In this proceeding, the Commission tentatively concludes that it should focus the Commission's analysis on viewpoint diversity. The Commission seeks comment on this tentative conclusion. Clear Channel states that the company's experience demonstrates that group owners have natural incentives to counter-program their stations and that there are efficiencies and economies associated with higher levels of common ownership.

65. Public interest groups urge the Commission to retain the local radio ownership rule and argue that radio station ownership caps are key to preventing the concentration of economic, social, and political power. Communications Workers of America (CWA) states that ''in 1996, there were 10,257 commercial radio stations and 5,133 radio owners.'' In 2010, ''there [were] 11,202 commercial radio stations and 3,143 owners, representing a 39 percent decrease in the number of owners since 1996.'' Future of Media Coalition (FMC) argues that consolidation in the radio industry ''has no demonstrable public benefit'' and that ''[r]adio programming from the largest station groups remains focused on just a few formats—many of which overlap with each other, creating further homogenization.''

66. In the Commission's studies it sought data to help it determine how best to structure a local radio ownership rule to satisfy the Commission's policy goals. Particularly relevant to the local radio rule, Media Ownership Study 5 analyzes the quantity of radio stations that are classified as news-formatted stations in the top 300 Arbitron metro areas. Media Ownership Study 7 addresses radio station ownership structure and minority-targeted programming using data on radio station formats.

c. Discussion

67. *Market.* Broadcasters generally assert that they are facing increased competition from new audio platforms and that this increased competition has led, at least in part, to a reduction in advertising revenues, which could threaten the continued viability of the broadcast radio industry. Broadcasters contend that Internet-based audio platforms such as Pandora and Apple's iTunes have ''transitioned—in just a few years—from new market entrants to full-fledged competitors of terrestrial radio broadcasters.'' Broadcasters assert that none of the new competitors to free, over-the-air radio broadcasting are constrained by government-imposed limits on the number of outlets that can be owned, and therefore, limiting ownership of broadcast stations places broadcasters at a disadvantage. For this reason, according to broadcasters, the Commission should modify the local radio ownership rule to permit increased common ownership in local markets.

68. The Commission tentatively concludes that broadcast radio stations compete in the radio listening market and that it is not appropriate, at this time, to expand the relevant market to include nonbroadcast sources of audio programming. This tentative conclusion is consistent with previous Commission decisions to not expand the relevant market to include satellite radio and Internet audio streaming. The Commission has also found previously that radio broadcasters compete in the radio advertising and radio program production markets. The Commission tentatively concludes that these markets do not have a direct impact on consumers and should not be the focus of the Commission's inquiry. The Commission seeks comment on these tentative conclusions. The Commission notes that the current record suggests that the audio marketplace has changed since the last media ownership review in terms of the number of choices consumers have to access audio programming, the number of audio programming providers, and audio programming choices. For instance, satellite radio subscribership has grown significantly, and millions of listeners now access audio content via the Internet. However, satellite radio still only serves a small portion of all radio listeners and millions of listeners do not have broadband Internet access. Moreover, these audio programming alternatives are national platforms that are not likely to respond to conditions in local markets. Therefore, the Commission proposes that the local radio ownership rule continue to focus on promoting competition among broadcast radio stations in local radio listening markets. The Commission seeks comment on these tentative conclusions.

69. These tentative conclusions not withstanding, the Commission seeks additional comment on the impact of new audio technologies on the continued viability of broadcast radio stations. Broadcast radio audiences appear stable, the recent decline in advertising has been replaced by gains in 2010, and overall advertising revenue share is predicted to decline only slightly through 2019. Does the apparent resiliency of the broadcast radio industry despite the growth of new technologies suggest that broadcast radio is unique? If so, what characteristics of broadcast radio make it unique, and is it appropriate to consider other technologies in the local radio ownership rule? How, if at all, do nonbroadcast sources of audio programming contribute to the Commission's policy goals? For example, do these alternatives to broadcast radio make programming and/or business decisions based on competitive considerations in local markets? Should the Commission determine that, contrary to its tentative conclusion, the local radio ownership rule should focus on promoting competition among broadcast radio stations and alternatives to broadcast radio stations in local radio markets, the Commission seeks comment below on whether and how to include these sources in the rule, either in determining market size or in setting the numerical limits.

70. *Market Size Tiers.* The Commission proposes to retain the current approach of numerical ownership limits based on market size tiers. Based on the Commission's years of experience in applying the rule, the Commission believes that the existing framework best ensures that the local radio ownership rule serves the Commission's policy goals and that limiting common ownership helps to prevent the formation of market power in local markets by ensuring that a few owners cannot ''lock up'' the available—limited—radio spectrum in a local market. Moreover, this bright-line approach provides transaction participants with a clear understanding of which transactions comply with the ownership limitations and allows for timely processing of assignment/transfer applications. The Commission seeks comment on these tentative conclusions.

71. The Commission tentatively concludes that it will continue to determine market size based on the number of commercial and noncommercial radio stations in the relevant local market. This tentative conclusion is consistent with the Commission's goal of promoting competition among local broadcast radio stations and the Commission's

decisions in the previous two media ownership proceedings not to consider nonbroadcast programming in the rule itself. However, to the extent the Commission determines it is appropriate to consider these alternative sources in the rule, the Commission seeks comment on whether to count these alternative sources in defining market size to determine how many stations an entity may own, and, if so, how. To what extent does the presence of these alternatives vary by market (*e.g.,* Internet-based audio services) or remain constant across markets (*e.g.,* satellite radio)? Should the Commission consider broadband deployment and/or adoption in a particular local market when determining whether to count Internet-based audio services? Should the Commission consider fixed or wireless broadband, or both? How much online radio listening is devoted to streams of broadcast radio stations, and how should this amount impact the weight of the impact of internet audio streaming in local markets? Should the Commission consider availability and/or adoption of satellite radio in local markets?

72. *Numerical Limits.* The Commission tentatively concludes that it should retain the existing numerical ownership limits for each existing market size tier. The Commission retained these numerical limits in the last media ownership proceeding, finding that public interest would not be served either by relaxing the numerical limits or by making the numerical limits more restrictive. In light of the degree of consolidation in the broadcast radio market following the relaxation of the local radio ownership limits in the 1996 Act, the Commission continues to believe that further relaxation of the numerical limits is not appropriate. Furthermore, the Commission continues to believe that making the limits more restrictive would be inconsistent with Congress's decision to relax the ownership limits and too disruptive to the radio marketplace. In light of these considerations, the Commission tentatively concludes that it is appropriate to continue to retain the numerical ownership limits adopted by Congress in the 1996 Act.

73. The Commission seeks comment, however, on whether to adopt any changes to the numerical ownership limits. Is there evidence that the existing limits no longer serve the Commission's policy goals or have caused specific harm to the radio broadcast industry? Do changes in the marketplace require modification of these limits, or do the characteristics of certain markets justify increasing the ownership limits in those markets? For example, should the Commission allow additional common ownership in markets with substantially more than 45 stations, now the top tier? Some larger radio markets may contain more than 100 stations, yet the ownership limit is the same—eight stations—in each. Should the Commission, as Clear Channel suggests, allow for increased common ownership in larger markets by creating additional tiers? Clear Channel suggests an increase from eight to ten in the number of stations a single entity may own in markets with between 55 and 64 stations and from eight to twelve the number of stations that a single entity may own in markets with 65 or more stations.

74. As an alternative to considering nonbroadcast audio programming in determining the size of a radio market, to the extent the Commission determines it is appropriate to consider these sources in the rule, the Commission seeks comment on whether to include these sources when setting the numerical limits and, if so, how it would do so. For example, the Commission could allow for ownership of an additional station in markets where alternative sources of audio programming are available, even though the market tier was established solely by the number of broadcast radio stations in the market. If the Commission does so, how should it determine whether such sources are available? For example, are Internet-based audio services consistently available across markets of similar sizes? Should the Commission take adoption rates into account? For example, satellite radio is generally consistently available across a local market, but the number of subscribers remains low compared to the total number of radio listeners. How should this factor into the Commission's consideration of the impact of satellite radio in local markets?

75. *AM/FM Subcaps.* In the *NOI,* the Commission sought comment on whether to retain the AM/FM subcaps. The Commission previously concluded that retaining the subcaps serves the public interest by promoting new entry into broadcast radio ownership, particularly by small businesses, including minority- and women-owned businesses. The Commission also concluded that technical and marketplace differences between AM and FM stations supported retention of the subcaps, consistent with the Commission's goal to protect competition in local radio markets.

76. Those advocating elimination of the subcaps argue that recent advances in technology, including online streaming, HD radio technology, and the use of FM translators to augment AM station broadcast signals, have improved the ability of AM radio to compete in the marketplace. In addition, they assert that many of the top stations in large and small markets are AM stations, which undercuts any argument that AM radio will flounder if the subcaps are removed. Some broadcasters also assert that lifting the subcaps will create new ownership opportunities of divested station for entities, which include minorities, women, and small businesses, because broadcasters will buy and sell certain in-market stations to strengthen existing station clusters. In addition, they state that the owners of these station clusters would then be in better financial positions to devote additional resources to local programming. Mt. Wilson, however, asserts that subcaps remain necessary to promote competition in local radio markets.

77. The Commission proposes to retain the current AM/FM subcaps for the reasons set forth in the *2006 Quadrennial Review Order.* The Commission continues to believe that this rationale supports retention of the subcaps and seeks comment on this proposal.

78. In addition, the Commission seeks comment on the impact, if any, of the ongoing introduction of digital radio on the AM/FM subcaps. AM stations face unique technical limitations with respect to FM stations, such as lesser bandwidth and inferior audio signal fidelity. In addition, unlike FM signals, AM signal propagation varies with the time of day (*i.e.,* AM signals travel much farther at night than during the day), and many AM stations are required to cease operation at sunset. As a result, FM stations tend to have greater listenership and revenues than AM stations, though this is not necessarily true of all stations in all markets. The Commission has previously stated that digital radio may help AM stations to even the playing field with FM stations.

79. What is the impact of digital radio on the technological and economic differences between AM and FM stations? The Commission notes that, unlike the digital television transition, radio stations have no obligation to operate in digital mode. At present, far more FM stations have provided the Commission with a notice of commencement of digital operations than AM stations, though the vast majority of stations in both services have not provided such notice. How, if at all, should these facts inform the Commission's analysis of the impact of digital operations on the AM/FM

subcaps? At this stage, has digital radio helped address the technical disadvantages of AM stations, such as fidelity and signal propagation, and led to a more balanced competition between AM and FM stations generally? Is it premature to consider the impact of digital radio, given the lack of widespread digital radio options (both AM and FM)? How, if at all, should the lack of a deadline to operate in digital affect this decision? Should the Commission also consider the level of consumer adoption when determining the impact of digital operations on the subcaps? What are the current levels of commercial availability and consumer adoption of radios capable of receiving digital signals?

80. Some broadcasters support elimination of the subcaps so they can acquire additional AM stations in order to aggregate AM stations to provide full signal coverage in large geographic areas or in areas with mountainous terrain. The Commission notes that it recently changed the FM translator rules ''to allow AM stations to use currently authorized FM translator stations to retransmit their AM service within their AM stations' current coverage areas.'' Approximately 500 a.m. stations are currently retransmitting their signals via FM translators, which has allowed some AM stations to operate at night for the first time and—according to anecdotal reports—has allowed certain AM stations to more effectively serve their communities. In light of this success, the Commission recently sought comment on whether to extend this rebroadcast authority to new FM translators with applications for authorization on file as of May 1, 2009. What has been the impact of the revised FM translator rule on the ability of AM stations to provide expanded coverage in their service areas without the need to acquire additional AM stations? If these stations are now able to provide expanded coverage in their service areas without acquiring additional AM stations, is elimination of the AM/FM subcaps also necessary to address signal coverage concerns? Why or why not? How, if at all, has this rule change impacted other AM technical/competition concerns, aside from the signal coverage issue raised by some broadcasters?

81. *Market Size Waivers.* The Commission has previously declined to adopt a specific waiver standard for the local radio ownership rule; instead, parties ''may seek a waiver under the 'good cause' waiver standard in [the Commission's] rules.'' Given the significant amount of common ownership currently permitted, is a specific waiver standard warranted, or should applicants continue to be required to justify a waiver of the rule under the Commission's general waiver standard? If the Commission determines that a specific waiver standard is warranted, what are appropriate waiver criteria? Should such a waiver standard apply equally to all markets, regardless of size, or should the Commission adopt different standards based on market size? Should the Commission limit the waiver standard to smaller markets? If so, what characteristics of those markets establish the need for a specific waiver standard (to the exclusion of larger markets)?

82. *Minority and Female Ownership.* As noted above, DCS suggests that significant barriers to entry for minority ownership remain in both the traditional and new media industries. The Commission seeks comment on DCS' assertion that minority communities are underserved as a result of the lack of minority media ownership, specifically as it relates to the radio market. Moreover, the Commission seeks comment on how the local radio rule affects minority and female ownership opportunities. The Commission asks that commenters be as specific as possible when identifying particular aspects of the rule that may impact the opportunity for minority and female entry into the radio business and ownership of broadcast stations. How is any such impact relevant to the Commission's goals, in particular promoting viewpoint diversity?

83. Media Ownership Study 7 analyzes the relationship between ownership structure and the provision of radio programming targeted to African-American and Hispanic audiences. Acknowledging that Black and Hispanic listeners have different viewing preferences from the majority White population, the data suggest that there is a positive relationship between minority ownership of radio stations and the total amount of minority radio programming available in the market. The data do not indicate a clear relationship between ownership concentration and programming variety, although the cross-sectional analysis does suggest that concentration promotes variety. A minority-owned radio station may not be more popular with minority audiences than a non-minority-owned radio station providing the same minority-targeted format. If minority-owned stations have smaller coverage areas they will necessarily have lower ratings and therefore appear less popular even though they may be more popular among those consumers that can receive the signal. The Commission seeks comment on the methodology and conclusions of Media Ownership Study 7 and how its conclusions should influence the Commission's decisions on the proposed local radio rule. The Commission requests commenters to provide additional data supporting their positions.

3. Newspaper/Broadcast Cross-Ownership Rule

a. Introduction

84. Newspaper/broadcast cross-ownership was first prohibited in 1975 to preserve viewpoint diversity in local markets. In the 2006 Quadrennial proceeding, the Commission concluded that some limitations on newspaper/broadcast cross-ownership continued to be necessary to promote viewpoint diversity. The Commission recognized, however, that certain newspaper/broadcast combinations may promote its localism goal. It found that the opportunity for sharing newsgathering resources and for realizing other efficiencies derived from economies of scale and scope may improve the ability of commonly owned media outlets to provide local news and information. In the *2002 Biennial Review Order,* the Commission determined that a ban on newspaper/broadcast cross-ownership was not necessary to promote its competition goal. The Commission concluded that most advertisers do not consider newspapers, television stations, and radio stations to be close substitutes for each other, and that therefore newspapers and broadcast stations do not compete in the same product market.

85. The newspaper/broadcast cross-ownership rule prohibits common ownership of a full-service broadcast station and a daily newspaper if: (1) A television station's Grade A service contour completely encompasses the newspaper's city of publication; (2) the predicted or measured 2 mV/m contour of an AM station completely encompasses the newspaper's city of publication; or (3) the predicted 1 mV/m contour for an FM station completely encompasses the newspaper's city of publication. In the 2006 Quadrennial proceeding, the Commission concluded that an absolute prohibition on newspaper/broadcast combinations is overly broad. It added waiver provisions to the rule whereby a waiver would be presumed to be not inconsistent with the public interest if a daily newspaper in a top 20 DMA sought to combine with: (1) A radio station or (2) a television station, and (a) the television station was not ranked among the top

four stations in the DMA and (b) at least eight independently owned and operated ''major media voices'' would remain in the DMA after the combination. For purposes of the newspaper/television combinations, major media voices would include full-power commercial and noncommercial television stations and major newspapers. For markets below the top 20 DMAs, the Commission would presume a waiver of the newspaper/broadcast cross-ownership rule to be inconsistent with the public interest.

86. Under the 2006 rule, a waiver applicant could overcome this negative presumption by demonstrating, with clear and convincing evidence, that the merged entity would increase the diversity of independent news outlets and the level of competition among independent news sources in the relevant market. The Commission would reverse the negative presumption in two limited circumstances: (1) When the proposed combination involved a failed/failing station or newspaper, or (2) when the proposed combination was with a broadcast station that was not offering local newscasts prior to the combination, and the station would initiate at least seven hours per week of local news after the combination.

87. Under both presumptions, the following four factors would inform the Commission's review of a proposed combination: (1) The extent to which cross-ownership would serve to increase the amount of local news disseminated through the affected media outlets in the combination; (2) the ability of each affected media outlet in the combination to employ its own staff exercise its own independent news judgment; (3) the level of concentration in the DMA; and (4) the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station was in financial distress, the owner's commitment to invest significantly in newsroom operations.

88. In *Prometheus II,* the Third Circuit vacated and remanded the newspaper/broadcast cross-ownership rule as modified by the Commission in the 2006 Quadrennial proceeding. The court based its decision on its conclusion that the Commission failed to comply with the notice and comment provisions of the Administrative Procedures Act. The court did not address the Commission's substantive modifications to the rule. Because the court reinstated the former rule, the absolute ban on newspaper/broadcast cross-ownership remains in effect, with no specific provision for waivers.

89. Consistent with previous Commission findings, the Commission tentatively concludes that some newspaper/broadcast cross-ownership restrictions continue to be necessary to protect and promote viewpoint diversity. Research shows that newspapers and local television stations, and their affiliated Web sites, are the primary sources that consumers rely on for local news. The Commission continues to believe, however, that a blanket prohibition on newspaper/broadcast combinations is overly broad and does not allow for certain cross-ownership that may carry public interest benefits. The Commission tentatively affirms its earlier findings that the opportunity to share newsgathering resources and realize other efficiencies derived from economies of scale and scope may improve the ability of commonly owned media outlets to provide local news and information, and the Commission seeks comment on how cross-ownership may promote the Commission's localism goal. The Commission notes here the observations of the Information Needs of Communities Report with regard to newspaper/broadcast cross-ownership. The report was written by an ongoing, informal working group that consisted of Commission staff, industry scholars, and consultants. As noted in the report, the views expressed in the report ''do not necessarily represent the views of the Federal Communications Commission, its Commissioners or any individual Bureaus or Offices.'' The report observes that newspaper/television cross-ownership ''could lead to efficiencies and improved business models that might result in more reporting resources,'' thereby promoting the Commission's localism goal. The report cautioned, however, that cross-ownership may instead ''simply improve the bottom line of a combined company without actually increasing the resources devoted to local newsgathering.'' In addition, the Commission tentatively concludes, as the Commission found in previous ownership reviews, that newspapers and broadcast stations do not compete in the same product market and, therefore, that the rule is not necessary to promote the Commission's competition goal.

90. The Commission continues to believe that the nation's largest markets can accommodate some cross-ownership without unduly harming viewpoint diversity. For reasons set forth below, the Commission proposes to adopt a rule that includes elements of the 2006 rule, including the top 20 DMA demarcation point, the top-four television station restriction, and the eight remaining voices test. The Commission tentatively concludes that viewpoint diversity is best achieved by analyzing these elements for proposed newspaper/broadcast combinations on a case-by-case basis. The Commission seeks comment on whether alternative approaches or different demarcations and restrictions would promote the Commission's diversity goal more effectively. For newspaper/television combinations, the Commission proposes to use Nielsen DMA definitions to determine when the rule is triggered, given the lack of a digital equivalent to the analog Grade A service contour.

91. The 2006 rule contained some elements that may not be necessary to promote the public interest. Specifically, as explained below, the Commission seeks comment on whether the detailed elements describing what showings are required to overcome the rule's stated presumptions and the showings required of all applicants unnecessarily increased the rule's subjectivity and complexity. The Commission also seeks comment on whether to retain some or all of the factors the Commission adopted under the 2006 rule to consider in cross-ownership transactions. The Commission also solicits input on whether to formulate a specific waiver provision that relies on clear, objective, and enforceable standards and a burden of proof standard for waiver requests. Finally, the Commission seeks comment on the impact of the newspaper/broadcast cross-ownership proposals on minority and female ownership opportunities.

b. Background

92. In the *NOI,* the Commission asked whether newspaper/television combinations should be treated differently from newspaper/radio combinations, as they are in the 2006 rule. The Commission sought comment on the impact of marketplace changes in the newspaper industry, which has seen increased competition for audiences and declining revenues. The Commission elicited input on the extent to which relaxing the rule could benefit newspapers and result in a net gain of local news and information. In the *NOI,* the Commission noted that consumers are increasingly getting their news from online and mobile platforms and asked about the significance of this trend for the newspaper industry. The Commission sought comment on whether relief from the 2006 rule, if any, should be provided through a revised rule or a waiver standard, and the factors that should apply under either approach. For example, the Commission

asked whether distinctions should be drawn based on market size and the number of voices remaining post-transaction. The Commission sought comment also on how to evaluate the efficacy of the rule in terms of the Commission's goals and the effects on the market participants.

93. Among the commenters responding to the *NOI,* newspaper and broadcast owners recommend repeal or relaxation of the rule, and public advocacy groups support the rule's retention. Supporters of repeal or relaxation of the rule argue that cross-ownership enhances localism and supports diverse points of view. They describe an evolution of the marketplace, including introduction of the Internet and other non-traditional media, such as iPhone applications, that they assert provide local and diverse content. They describe serious economic challenges faced by newspapers and suggest that the only way for them to survive is by entering combinations and creating economies of scale. Commenters state that: Newspaper circulation is in a downward spiral since 2008, reaching its lowest point in nearly 70 years in October 2009; advertising revenues, which traditionally make up 80 percent of overall newspaper revenues, have dropped 43 percent from 2007 through 2009; and several newspaper publishers have sought bankruptcy protection, while others have ended their print editions. They state that the newspapers that remain in business have closed domestic and foreign bureaus, laying off thousands of journalists. Newspaper Association of America (NAA) cites to Project for Excellence in Journalism's (PEJ) recent estimate that newspapers will devote $1.6 billion less annually to news reporting in 2010 than they were able to do just three years ago.

94. Supporters of the 2006 rule—or a strengthened rule—assert that restrictions remain necessary to protect against further concentration in an industry already characterized by concentrated vertical ownership and consolidated local ownership. They argue that the 2006 rule provides flexibility where cross-ownership efficiencies might benefit the public interest and permit combinations in failing business situations, while requiring maintenance of separate newsrooms for the purpose of diversity. They argue that the only benefits of cross-ownership are financial benefits for the owners, which they assert arise at the cost of diversity and localism for citizens. In the Commission's studies, the Commission sought data to help it analyze questions related to the relevance of the newspaper/broadcast cross-ownership rule to the Commission's policy goals. Particularly, the Commission measured whether the presence of cross-owned stations affects the amount of local news provided at the local market level and at the individual station level. The Commission also measured localism by analyzing consumer satisfaction with the amount of local news available in markets. In addition, the Commission studied the impact of cross-ownership on viewpoint diversity in media markets. The Commission seeks comment on the extent to which its proposed approaches for newspaper/television combinations are supported by data from the Commission's studies or other available data.

c. Discussion

95. The Commission tentatively concludes that some restrictions on newspaper/broadcast combinations continue to be necessary to promote viewpoint diversity within local markets. The Commission seeks comment on this tentative conclusion. There is evidence that Americans continue to rely on local television stations and newspapers for the majority of their local news, despite the rising popularity of the Internet as a platform for access to news. Studies have found that approximately three-quarters of Americans obtain news from a local television station. In addition, although newspaper readership has declined in recent years, in 2010, 37 percent of Americans reported reading a newspaper the preceding day.

96. Although consumers are turning increasingly to the Internet for news and information generally and seeking new platforms on which to access local news, the Web sites most frequently viewed for news and information are affiliated with legacy media. In the fall of 2009, among the top roughly 200 news Web sites based on traffic, 67 percent were associated with legacy media, and 48 percent were associated with newspapers in particular. More recently, the Information Needs of Communities Report concluded that ''from a traffic perspective, newspapers have come to dominate the Internet on the local level.'' Along with newspaper Web sites, local television news Web sites rank among the most popular news Web sites. Indeed, Media Ownership Study 6 looks at online local news content and finds very little that is not affiliated with a newspaper or television or radio station. Other Web sites offering local news presently receive little traffic. Even where there are Internet-only local news outlets, the study suggests that the aggregate weekly quantity of such content is about equal to a single page of a full-size daily newspaper. The PEW Research Center's Baltimore Study similarly finds that the majority of local news content on Web sites unaffiliated with newspapers or broadcast stations contains only commentary on the stories and features that originated from traditional media outlets. Given the continuing prevalence of broadcast stations and newspapers as news sources consumers rely on the most, the Commission tentatively finds that some newspaper/broadcast restrictions remain necessary to protect viewpoint diversity. The Commission will continue to monitor and assess the Internet's role in the marketplace for local news and information in this regard. The Commission seeks comment on these tentative conclusions.

97. The Commission has found evidence previously that some newspaper/broadcast cross-ownership may produce increased local news. What benefits and efficiencies accrue from cross ownership? Media Ownership Study 4 examines the impact of newspaper/television cross-ownership on the amount of local television news at both the station and the market level. The study finds that, other things being equal, a station that is cross-owned with a daily newspaper produces more local news than a stand alone station. However, when the analysis is done at the market level, other things being equal, a market with a cross-owned station offers somewhat less local news than a market without a cross-owned station. Because there was little variation in the extent of newspaper-television cross-ownership during the period studied, the author recognizes that the conclusions of the statistical analysis must be treated with caution. The Commission seeks comment on how to weigh the Media Ownership Study 4 findings and how those findings should affect the Commission's analysis. Has this rule resulted in the reduction of local news, the loss of journalism positions, and the failure of newspapers? What challenges have newspapers faced because of the current economy and the changing marketplace?

98. *Nielsen DMAs.* As an initial matter, for television stations, the Commission proposes to apply any ownership combination restrictions to daily newspapers and stations within the same DMA. The Commission seeks comment on its tentative conclusion that the Commission will use Nielsen DMA definitions to determine when the cross-ownership rule is triggered, as there is no digital equivalent contour for

the analog Grade A contour specified by the current rule. The Commission seeks comment on the impact of changing from a contour-based rule to a DMA-based rule. For any proposed rule, would many more newspaper/television station combinations be implicated by the cross-ownership rule under a DMA-based approach as compared to a contour-based approach? Are there negative consequences to switching to a DMA-based rule? What are the benefits? The Commission's preliminary view is that DMA market definitions would reflect circulation and viewing areas more accurately than the current approach. However, given the large size of some DMAs, the Commission seeks comment on whether the rule instead should be triggered only if the newspaper's circulation extends to the community of license of the television station.

99. To the extent the rule relies on DMAs, the Commission proposes to grandfather ownership of existing combinations of television stations and newspapers that would conflict with the newspaper/broadcast cross-ownership rule by virtue of the change to a DMA-based approach. Compulsory divestiture is disruptive to the industry and a hardship for individual owners, and any benefits to the Commission's policy goals would likely be outweighed by these countervailing considerations. The Commission seeks comment on these tentative conclusions. Are the Commission's policy goals served by allowing grandfathered combinations to be freely transferable in perpetuity, irrespective of whether the combination complies with the newspaper/broadcast cross-ownership rule? What is the effect on the entities if they are sold separately? Is it possible that such a rule could have the unintended consequence of causing a station or newspaper to close?

100. *Proposed Rule.* In taking a fresh look at the rule, the Commission tentatively finds that a blanket rule prohibiting all newspaper/broadcast cross-ownership within the same service area is unnecessarily broad. The Commission tentatively concludes that the top 20 DMA demarcation point, the top-four television station restriction, and the eight remaining major media voices test for television/newspaper combinations contained in the 2006 rule are the fundamental elements of a rule that will protect and promote viewpoint diversity while also properly supporting localism most effectively. The Commission notes that these criteria are objective standards that can be applied and enforced consistently and fairly, with low cost to the applicants and Commission. The Commission seeks comment generally on the benefits of adopting these criteria and specifically on their individual aspects, as detailed below.

101. The Commission proposes a rule that prohibits common ownership of a daily newspaper and (1) a full-power commercial television station within the same DMA, (2) an AM station with a predicted or measured 2 mV/m contour service area that encompasses the newspaper's city of publication; or (3) an FM station with a predicted 1 mV/m contour service area that encompasses the newspaper's city of publication. The proposed rule would presume a waiver to be consistent with the public interest if: (1) A daily newspaper in a top 20 DMA sought to combine with a radio station, or (2) a daily newspaper sought to combine with a full-power commercial television station in the same top 20 DMA, and: (a) The television station is not ranked among the top four television stations in the DMA and (b) at least eight independently owned and operated ''major media voices'' would remain in the DMA after the combination. For purposes of the waiver, major media voices would include full-power commercial and noncommercial television stations and major newspapers. The rule would presume a waiver to be inconsistent with the public interest in all other circumstances. Below the Commission seeks comment on alternative demarcation points for these three key elements of the proposed rule (top-four television station restriction, eight remaining major media voices criterion, top 20 DMA cutoff) and on how in practice these three constraints interact with one another.

102. The Commission tentatively concludes that the case-by-case approach adopted as part of the 2006 rule to consider requests for waivers of the newspaper/broadcast cross-ownership rule would best serve the Commission's goal of promoting viewpoint diversity. This approach should provide an appropriate amount of flexibility to allow the Commission to consider specific, individual circumstances. Presumptions either in favor of or against a waiver can be overcome when specific facts so warrant. Under this approach, opponents to a waiver request, even in the largest markets, maintain the ability to argue that specific circumstances overcome a favorable presumption. In addition, parties requesting a waiver in smaller markets are not precluded from demonstrating the benefits of that particular combination in the individual market. The Commission seeks comment on these tentative conclusions.

103. Alternatively, the Commission seeks comment on whether a bright-line rule addressing newspaper/broadcast cross-ownership would be preferable. Such a rule would allow common ownership of (1) one daily newspaper in a top 20 DMA and one commercial radio station, or (2) one daily newspaper and one full-power commercial television station in a top 20 DMA under the circumstances in which the case-by-case approach proposed above would establish a favorable presumption. For purposes of the rule, major media voices would include full-power commercial and noncommercial television stations and major newspapers. Other combinations would be prohibited. The purpose of a bright-line rule is to create a clear-cut, readily enforceable standard that provides consistency and certainty to the marketplace. The Commission seeks comment on whether this approach would result in a simplified rule that would preserve essentially the same levels of local viewpoint diversity as a case-by-case approach but reduce applicants' costs and make the Commission's review of transfer and assignment applications more objective, predictable, and expeditious. Is a bright-line formula too blunt a tool to account for variable conditions that may exist when considering newspaper/broadcast cross-ownership waivers, even in similarly sized markets? The Commission notes that even utilizing a bright-line rule, petitions to deny an application would not be precluded even for a newspaper/broadcast combination within a top 20 DMA or a waiver request in other markets. Would including the determinative criteria in a governing rule alleviate the need to undergo a potentially lengthy and expensive waiver process for applications presumed to be in the public interest? If the results are likely to be the same in most cases, is the flexibility of a tailored review process worth the additional time and expense? The Commission seeks comment on the extent to which the structure of the bright-line approach would diminish the likelihood of successfully opposing such a merger. Under a bright line approach, should the Commission adopt specific standards for waivers or rely on the Commission's generally applicable waiver standards?

104. *Market Tiers.* The Commission proposes to differentiate between markets in the top 20 DMAs and markets below the top 20 DMAs. In the last review of this rule, the Commission found a ''notable difference between the

top 20 markets and all other DMAs,'' citing the range of media outlets available in the top 20 DMAs and concluding that ''[t]he diversity in the number and types of traditional media outlets in the largest markets ensures that the public is well served by antagonistic viewpoints. Markets outside of the top 20 DMAs do not feature diversity to such an extent.'' The Commission continues to believe that the top 20 DMAs are notably different from other markets, both in terms of voices and in terms of television and radio households. Based on the range of media outlets available in the top 20 DMAs, the Commission tentatively concludes that diversity in those largest markets is healthy and vibrant in comparison to other DMAs. For example, while there are at least 10 independently owned, commercial television stations in 15 of the top 20 DMAs, none of the DMAs ranked 21 through 25 has even eight independently owned, commercial television stations. Additionally, while 15 of the top 20 DMAs have at least two newspapers with a circulation of at least five percent of the households in that DMA, four of the five DMAs ranked 21 through 25 have only one such newspaper. Moreover, the top 20 markets, on average, have 16 independently owned television stations and major newspapers and approximately 2.5 million television households. By comparison, DMAs 21 through 30 have on average nine major voices and fewer than 1.2 million television households, representing drops of 44 percent and 52 percent from the top 20 markets, respectively. DMAs 31 through 50 have average numbers of voices for each category similar to markets 21 through 30, but even fewer television households on average, 856,700 and 694,500, respectively. DMAs 51 through 210 show even more dramatic drops, with, on average, seven major voices and approximately 236,000 television households, representing drops of 56 percent and 91 percent from the top 20 DMAs, respectively. The diversity in the number and types of traditional media outlets in the largest markets ensures that the public is well served by a variety of viewpoints. Markets outside of the top 20 DMAs do not feature diversity to such an extent.

105. The Commission seeks comment on this analysis of the distinction between the top 20 DMAs and others and on the Commission's tentative conclusion that the viewpoint diversity level in the 20 largest DMAs is sufficient to consider adopting a regulatory framework that would accommodate a limited amount of newspaper/broadcast cross-ownership in those markets. The Commission also seeks comment on its continued belief that markets below the top 20 DMAs cannot accommodate any such cross-ownership, absent particular circumstances warranting a waiver. The Commission asks commenters to address separately market structure characteristics, such as the number of independent media voices, and market size characteristics, *e.g.,* the number of television households in the market. Market structure characteristics are directly and separately addressed by the proposed top four television station restriction and the proposed eight remaining major media voices criterion. Due to the high fixed costs of television program production (including local programming in general and local news programming in particular), the number of television households in the market affects the revenue base available to support local programming and hence affects the quantity, quality, and diversity of local programming produced in the market, independent of the number of media voices.

106. In addition, the Commission seeks comment on whether a different demarcation point would more effectively protect and promote the Commission's viewpoint diversity and localism goals. For example, would differential treatment be warranted for newspaper/broadcast combinations in the top 30 DMAs, top 40 DMAs, top 50 DMAs, or at a different market size? Please provide specific market data to support the proposed demarcation point. If the Commission were to maintain the prohibition on combinations involving the top four television stations and the requirement to retain eight major media voices in the market, what is the impact on permitted combinations of varying the demarcation point?

107. *Newspaper/Television Station Combinations: Top-Four Restriction.* The Commission proposes to prevent a daily newspaper from combining with a television station that is ranked among the top four television stations in the DMA. The Commission proposes that the current criteria would continue to apply when determining what qualifies as a daily newspaper and what qualifies as a television station ranked among the top four stations. The Commission believes that allowing a top-four station to merge with a daily newspaper would create the greatest risk of losing an independent voice in that market. The Commission's analysis shows that there is a decrease in the amount of local news broadcast between the fourth and fifth ranked stations. In larger markets, the fifth ranked station generally provides no more than half the amount of local news of the fourth ranked station. The Commission seeks comment on this analysis and on its application to the proposed approaches.

108. Furthermore, the Commission notes the dominance of the four major television networks in most local television markets. How commonly are the top four stations in a market affiliated with the four major broadcast networks? The Commission seeks comment on the findings in Media Ownership Study 4 that television stations affiliated with one of the four major broadcast networks tend to air more local news than other stations and that there are about 35 additional minutes of local news programming in the market for each additional station in the market that is affiliated with one of the four major broadcast networks. The Commission seeks comment on the presumption that, therefore, the top four television stations generally contribute the most local news and information among the television stations within a market.

109. Alternatively, the Commission seeks comment on whether a different limit is appropriate. For example, is there evidence to support a cross-ownership restriction between newspapers and the top-five or the top-six television stations in some markets? If so, why? Is there support to prevent combinations between newspapers and stations affiliated with one of the four major broadcast networks? If so, why? Could such combinations potentially harm diversity more than other combinations? Is there evidence that these stations provide more diversity in local markets?

110. *Newspaper/Television Station Combinations: Eight Major Media Voices Restriction.* The Commission tentatively proposes to prohibit transactions where less than eight independently owned and operated ''major media voices'' would remain in the DMA after a transaction. The Commission seeks comment, however, on the potential impact of eliminating this voices test. The Commission's examination of the top 20 DMAs indicates there would be no impact in these markets. Under the existing ownership patterns in the top 20 markets, even if all daily newspapers combined with television stations, at least eight major media voices would remain in the market. The existence of the eight voices test in the local television ownership rule also helps retain independent major media voices by limiting commercial consolidation once only eight independent television

stations remain in the market. As long as these eight independent television voices remain in the market, consolidation between newspapers and television stations will not reduce the number of major media voices below eight. Is the Commission's assessment accurate, and if so, is there any reason to incorporate the eight voices test into a new rule or waiver provision? Is there a reason to require a different number of voices to remain in the DMA, and if so, how would that number better protect the Commission's diversity goal? Should the Commission's analysis change if the Commission does not distinguish the top 20 DMAs but adopt a different demarcation point? For example, would there be an impact on the market if the Commission eliminates the eight voices test and creates a separate tier for the top 30 DMAs?

111. *Newspaper/Radio Station Combinations.* As an alternative to the Commission's proposal above to retain the restriction on newspaper/radio combinations, the Commission also seeks comment on whether it should eliminate the newspaper/radio restriction in all markets or otherwise relax the restriction. The Commission tentatively concludes that radio stations are not the primary outlets that contribute to local viewpoint diversity. Media Ownership Study 5 finds that at least one commercial radio station with a news and talk format serves most markets and that a public news radio station serves about 40 percent of markets. Research shows, nevertheless, that consumers' main sources for local news and information are television stations, newspapers, and their affiliated Web sites. Moreover, the Commission tentatively concludes that a substantial amount of news and talk show programming on radio stations is nationally syndicated. The Commission seeks comment on its tentative conclusion that radio stations generally are not the dominant source consumers turn to for local news and information, as compared to newspapers and television stations. The Commission seeks comment on whether, to the extent radio stations serve as sources of local news and information, viewpoint diversity would be adequately protected by the proposed local radio limits. Because consumers in markets of all sizes rely most heavily on other types of news outlets for local news and information, is there any reason to distinguish between markets in the top 20 DMAs and those below the top 20 DMAs for purposes of newspaper/radio combinations? Would the removal of prohibitions against newspaper/radio combinations have any impact on the ownership, or contribution to local viewpoint diversity, of noncommercial educational FM broadcast stations, given the restriction that they may be licensed only to nonprofit educational organizations? Would common ownership between a radio station and a newspaper increase the quality and quantity of local news programming available on radio stations due to shared newsgathering expertise and resources? Could such combinations provide an opportunity for both radio stations and newspapers that are struggling financially to become more vital participants in the news and information marketplace and what is the likelihood of this outcome? Should the Commission consider a rule that prohibits newspaper-radio combinations in certain markets only when the radio station is among the largest four in the market by audience share?

112. The proposed newspaper/broadcast cross-ownership rule retains the use of radio contours to determine when the rule is triggered. As discussed below, Arbitron market definitions are used to delineate a market's geographic boundaries for purposes of the local radio limits and the Commission proposes to use DMAs for purposes of triggering the local TV ownership rule and the newspaper/television aspect of the cross-ownership rule. Should the Commission continue to use contours to determine whether the newspaper/broadcast cross-ownership rule is triggered for newspaper/radio combinations? What are the benefits of continuing to rely on contours only for this portion of the rule? Can retaining a contour approach to newspaper/radio combinations be reconciled with the Commission's proposed use of geographic market definitions for newspaper/television combinations? Alternatively, should the Commission replace radio contours with Arbitron market definitions for purposes of determining whether the newspaper/broadcast cross-ownership rule is triggered for newspaper/radio combinations? Are there any specific concerns about moving to an Arbitron market definition for this rule? Would more or fewer newspaper/radio station combinations be implicated by the cross-ownership rule under an Arbitron-based approach as compared to a contour-based approach? How would the Commission handle non-Arbitron radio markets? The Commission seeks comment.

113. To the extent the rule relies on a different market area, the Commission proposes to grandfather ownership of existing combinations of radio stations and newspapers that would conflict with the newspaper/broadcast cross-ownership rule by virtue of the change. Compulsory divestiture is disruptive to the industry and a hardship for individual owners, and any benefits to the Commission's policy goals would likely be outweighed by these countervailing considerations. The Commission seeks comment on these tentative conclusions. Are the Commission's policy goals served by allowing grandfathered combinations to be freely transferable in perpetuity, irrespective of whether the combination complies with the newspaper/radio cross-ownership rule? What is the effect on the stations if they are sold separately? Is it possible that such a rule could have the unintended consequence of causing a station or newspaper to close?

114. *Factor Tests.* The 2006 rule included a list of four factors for the Commission to analyze when deciding whether a specific newspaper/broadcast ownership combination was in the public interest. The Commission seeks comment on whether it should retain those factors. In 2006, the Commission stated that the factors were intended to address ''the need to support the availability and sustainability of local news while not significantly increasing local concentration or harming diversity.'' Specifically, the 2006 rule required applicants to make showings regarding: (1) The amount of local news that would be produced post-transaction; (2) the extent to which the affected media outlets would exercise independent news judgment; (3) the level of concentration in the DMA; and (4) the financial condition of the applicant, and if financially distressed, the applicant's commitment to invest in newsroom operations. Do the factors provide useful predictability or clarity for applicants applying for a waiver of the newspaper/broadcast cross-ownership rule? Do factors provide specific benefits to the Commission staff reviewing applications and waiver requests? Alternatively, are any of the factors, such as the first two factors, too subjective, or focused on future behavior that may be too difficult to predict or enforce? Do specific factors create unnecessary delay in the application and review process? Should the Commission exclude all of these elements from the new rule and consider applications on a more case by case basis? If so, should the presumptions included in the rule be interpreted as establishing a *prima facie* case in favor of or against a transaction and, once established, shifting the

burden of proof regarding the Commission's treatment of an application to those that may seek to overcome the presumption? If so, what should that burden of proof be? Would a well defined exception or waiver standard, as discussed below, sufficiently support the Commission's consideration of specific factual scenarios related to a proposed transaction, including for instance, the financial condition of the entities involved and/or the availability of local news, such that the specification of these additional factors is not necessary? The Commission seeks comment.

115. *Exception or Waiver.* The Commission also seeks comment on whether to retain or abolish the factors adopted in 2006 to overcome or reverse a negative presumption. Is it better to remove all factors from the rule and rely on the Commission's general waiver standard? Under the 2006 rule, a waiver applicant could overcome a negative presumption by demonstrating, with clear and convincing evidence, that the merged entity would increase the diversity of independent news outlets and the level of competition among independent news sources in the relevant market. Is such a standard sufficiently objective and quantifiable? The 2006 rule further stated that the Commission would reverse the negative presumption in two limited circumstances: (1) When the proposed combination involved a failed/failing station or newspaper, or (2) when the proposed combination was with a broadcast station that was not offering local newscasts prior to the combination, and the station would initiate at least seven hours per week of local news after the combination. Is such a standard sufficiently objective and quantifiable? Should the give special consideration to a transaction that involves a station or newspaper that is failed or failing? If so, what showing should an applicant be required to make to qualify as failed or failing? Is a requirement that a waiver applicant show that a proposed combination would increase the number of hours of local news programming overly focused on future behavior that may be too difficult to predict or enforce? Are there other factors that the Commission should adopt that would be more objective or easier to enforce than those adopted in 2006? If so, what would be the benefits of adopting any other proposed factors and what would be the harms? The Commission also seeks comment on whether it may be appropriate to adopt specific factors to consider in instance in which an applicant is seeking a waiver of the restriction on combinations involving a top-four television station or the eight voice test. Finally, the Commission seeks comment on whether and why such provisions are needed given that filing a waiver petition is always an option under § 1.3 of the Commission's rules?

116. *Minority and Female Ownership.* According to DCS, there are still significant barriers to entry by minority owners in both the traditional and new media industries; DCS supports measures to facilitate minority media ownership. DCS states that minority-owned stations are more likely to provide programming geared towards minority audiences and that minority communities are underserved as a result of the lack of minority media ownership. The Commission seeks comment on how the proposed newspaper/broadcast cross-ownership rule could affect minority and female ownership opportunities. The Commission seeks comment on how promotion of diverse ownership promotes viewpoint diversity. The Commission requests that commenters provide additional data supporting their positions.

4. Radio/Television Cross-Ownership Rule

a. Introduction

117. The current radio/television cross-ownership rule limits the number of commercial radio and television stations an entity may own in the same market, with the degree of common ownership permitted varying depending on the size of the relevant market. The rule allows common ownership of at least two television stations and one radio station in the smallest markets, while in larger markets, a single entity may own additional stations depending on the number of media owners in the market. The Commission retained the radio/television cross-ownership rule in the *2006 Quadrennial Review Order* to ensure diversity in local markets. In *Prometheus II,* the Third Circuit upheld the Commission's decision to retain the rule, based in part on the Commission's assertion in the *2006 Quadrennial Review Order* that the rule benefited viewpoint diversity. It noted that the Commission supported retention of the rule in the 2006 Quadrennial proceeding with some evidence that commonly owned stations can share the same viewpoint.

118. Pursuant to a statutory mandate, the Commission considers whether the radio/television cross-ownership rule continues to be necessary to promote the public interest. The Commission tentatively concludes that it does not. The Commission believes that repeal of the radio/television cross-ownership rule is not likely to increase significantly consolidation of broadcast facilities. To the extent that repeal does allow additional consolidation, the Commission seeks comment on whether such consolidation would result in greater efficiencies, to be passed through to consumers in the form of enhanced programming choices or other consumer welfare benefits. Moreover, as discussed further below, data suggest that radio/television cross-ownership does not negatively impact the amount of local news available to consumers or the diversity of such programming. Finally, the Commission is persuaded by the evidence from its studies and the changes in the marketplace that the rule is not necessary to ensure sufficient diversity in local markets. Accordingly, the Commission tentatively concludes that in the current media market, the Commission's goals of localism and diversity will be adequately protected by the local radio and television ownership rules without this additional limitation. The Commission seeks comment on these tentative conclusions. The Commission also seeks comment on whether there are any reasons to retain the rule.

b. Background

119. The Commission first restricted combined ownership of radio and television stations in local markets in 1970 to foster competition and promote diversification of programming sources and viewpoints. As discussed in the *NOI,* in 1999 the Commission relaxed the rule to balance diversity and competition concerns against the desire to permit broadcasters and the public to realize the benefits of common ownership. In the *2006 Quadrennial Review Order,* the Commission retained the radio/television cross-ownership rule, based in part on the concern that the local television and radio rules were not sufficient to protect diversity in the media marketplace. After reviewing the record, the Commission determined that radio and television both contributed to the ''marketplace of ideas'' and thus competed in providing diversity. At the same time, the Commission acknowledged that newspapers and television were ''far and away the most important sources'' of news and information, with radio ''a distant third.'' On review, the Third Circuit upheld the Commission's decision to retain the rule finding that the rule

continues ''to ensure that viewpoint diversity is adequately protected.''

120. In the *NOI,* the Commission sought comment on whether the current rule continues to be necessary in the public interest. NAB supports repeal of the radio/television cross-ownership rule because it believes that additional cross-ownership will allow broadcasters to better compete for advertising and viewers with the new media sources entering the market and will allow them to invest more in local news and information. Fox also suggests that allowing more common ownership of different types of media in a single market could enhance localism. NAB, Fox, and CBS argue that, in light of the explosion of media outlets and Internet-related media in all markets, and the resulting fragmentation of the local audience, ''repeal of the [radio/television cross-ownership] rule will not adversely affect the availability of diverse audio and video programming and viewpoints.'' Fox contends that in the Internet age ''all outlets have an equal capacity to reach the vast majority of citizens (especially now that three-quarters of all American adults use the Internet).'' In contrast, AFTRA argues that the Commission should maintain the radio/television cross-ownership rule to prevent further consolidation and promote localism and diversity. AFTRA points out that, between 1996 and 2010, ''the number of commercial radio stations increased by about 10 percent * * * [while] the number of station owners fell by about 40 percent.'' AFTRA further asserts that, during the same period, ''the number of commercial television stations increased by about 15 percent * * * [while] the number of station owners fell by 33 percent.''

121. In the Commission's economic studies, which are discussed in more detail below, the Commission sought data to help analyze questions related to the relevance of the radio/television cross-ownership rule to the Commission's policy goals. Particularly, the Commission measured whether the presence of radio/television cross-ownership affects the amount of local news provided at the local market level and at the individual station level. The Commission also measured localism by analyzing consumer satisfaction with the amount of locally oriented programming available in markets. In addition, the Commission studied the impact of radio/television cross-ownership on the amount of diverse viewpoints available in media markets.

c. Discussion

122. *Competition.* As the Commission has held in the past, the Commission does not believe this rule is necessary to promote competition. Previously, the Commission has concluded that most advertisers do not consider radio and television stations to be good substitutes for their advertising needs, and, therefore, combinations of radio and television stations would not harm competition in local media markets. This conclusion was based in part on Department of Justice assertions that radio advertising constitutes a separate antitrust market. The Commission continues to believe that radio and television are not good substitutes in the advertising market. The Commission seeks comment on this tentative conclusion.

123. Similarly, the Commission tentatively concludes that most consumers do not consider radio and television stations to be substitutes for one another. That is, the Commission believes that consumers are not likely to switch between television viewing and radio listening based on the program content of radio and television stations. Nor does the Commission believe it likely that radio or television stations adjust their content in response to changes in the other medium's programming. Accordingly, the Commission believes that repealing the radio/television cross-ownership rule will not negatively impact the Commission's competition goals and seek comment on this tentative conclusion.

124. As stated above, broadcasters argue that lifting the radio/television cross-ownership restriction will enable them to compete better in today's marketplace. The Commission seeks comment on whether repealing the restriction would allow greater efficiencies through joint operations that can be passed on to consumers through investment in programming. In addition, the Commission seeks comment on whether allowing additional radio-television combinations would lead to consumer benefits in the form of additional investment in radio or television news rooms, increased editorial staffs, or additional local news coverage on radio stations.

125. The Commission does not anticipate, however, that eliminating the radio/television cross-ownership rule would significantly contribute to broadcast consolidation. Pursuant to the existing radio/television cross-ownership rule, in the largest markets, entities currently may own, in combination, either two television stations and six radio stations or one television station and seven radio stations. The local radio ownership rule permits an entity to own a maximum of eight radio stations in a single market. Therefore, in the largest markets, absent the current radio/television cross-ownership rule, an entity approaching the limits of the existing cap could acquire only one additional radio station and remain in compliance with the local radio rule. Likewise, an entity with one television station already could acquire only one additional station in the largest markets under the current local television rule. Thus, the Commission believes that the effect of eliminating the radio/television cross-ownership rule will be small, and that the local radio and local television rules will continue to prevent a significant increase in the consolidation of broadcast facilities. The Commission seeks comment on these issues. What impact is the proposed action likely to have in small and mid-sized markets? Are there specific examples of markets where repeal of the rule may substantially contribute to broadcast consolidation?

126. *Localism.* As the Commission has held in the past, the Commission does not believe this rule is necessary to promote localism. The Commission tentatively concludes that repealing the radio/television cross-ownership rule will not negatively impact the Commission's localism goal. Again, the Commission believes that the local television and local radio rules, as well as the newspaper/broadcast cross-ownership rule, will sufficiently promote and protect the Commission's localism goals. Radio and television broadcasters would continue to have the same obligation to serve their local communities in the absence of a radio/television cross-ownership restriction. The Commission also recognizes that consumers primarily rely on television and newspapers, and their affiliated Web sites, for their local news. Moreover, audiences of traditional news sources have moved toward new media, with both Internet and cable news sources growing. The Commission recognizes that radio stations that air nationally syndicated news or talk show programming contribute to the overall amount of news and information within their local market. The Commission notes that lifting the radio/television cross-ownership rule will not impact the availability of non-commercial news radio stations. The Commission seeks comment on these tentative conclusions.

127. In the media ownership studies, the Commission sought to develop data to inform its analysis of whether the radio/television cross-ownership rule promotes localism. In particular, both Media Ownership Study 1 and Media Ownership Study 4 look at whether the level of radio/television cross-ownership in a market is associated with the amount of local television programming provided. Evidence from the studies is mixed with respect to this question.

128. Media Ownership Study 1 examines how cross-ownership is associated with localism, as measured by the amount of local news provided in the market. The study finds that cross-ownership decreases local television news hours but raises ratings, which leads to ambiguous results. The Commission seeks comment on these findings and their relevance to the Commission's analysis of whether the radio/television cross-ownership rule is necessary to promote the Commission's localism goal.

129. Media Ownership Study 4 finds that, at the station level, radio/television cross-owned stations appear to air more local news on average, though the impact is marginal. According to the study, for every additional in-market radio station a parent owns, the television station will air 3.7 more minutes of local news. The Commission seeks comment on these study findings and how they should affect the Commission's analysis. At the local market level, however, Media Ownership Study 4 finds that increases in radio/television cross-ownership correlate to decreases in the total amount of news minutes provided in the market. As the study notes, however, due to economies of scale, this negative correlation is partially mitigated as the average number of broadcast outlets per cross-owned station group in the market increases.

130. *Diversity.* The Commission tentatively concludes that the radio/television cross-ownership rule is no longer necessary to promote the Commission's goal of encouraging viewpoint diversity. The Commission seeks comment on this tentative conclusion, as well as the tentative conclusion that the proposed local television and radio rules and the newspaper/broadcast cross-ownership rule will suffice to protect and promote the Commission's diversity goal. The Commission also seeks comment on alternatives to this tentative conclusion, including whether or not it is necessary to retain the radio/television cross-ownership rule for diversity purposes. The Commission seeks data to support retention of the rule, including any data that the cross-ownership rule is necessary to ensure diverse viewpoints in local markets.

131. Overall, the media ownership studies provide little evidence that cross-ownership, to the degree currently allowed under the radio/television cross-ownership rule, has an effect on viewpoint diversity. Media Ownership Study 8A analyzes the impact of radio/television cross-ownership on viewpoint diversity available in local markets by examining how consumers react to the content delivered to them. The study utilizes variations in viewing patterns of local television news programs as compared to local viewing patterns for national television news programs to develop a measure of diversity of content on local news programs, and relates changes in viewing patterns to changes in local media cross-ownership. The study finds that, in general, radio/television cross-ownership has a negligible effect on viewpoint diversity. Media Ownership Study 8B examines the impact of media ownership, including radio/television cross-ownership, on the amount of programming provided in television news programs in three categories: Politics, local programming, and issue diversity (diversity in coverage of news topics). Overall, the study finds little evidence that market structure influences diversity. Nonetheless, with respect to one of the three types of diversity—issue diversity—the study finds that, for the majority of topics for which cross-ownership is statistically significant, increases in cross-ownership are associated with greater diversity. The Commission seeks comment on the findings presented in Media Ownership Study 8A and Media Ownership Study 8B. Specifically, the Commission seeks comment on how these findings should inform its analysis of whether the radio/television cross-ownership rule remains necessary to promote viewpoint diversity.

132. While consumers continue to rely on television and newspapers, and their affiliated Web sites, for their local news, they increasingly turn to new media, both the Internet and cable, as news sources. The recent Information Needs of Communities Report finds that the Internet has created more diversity and choice in news and information, and that most communities have seen a rise in the number and diversity of outlets, as well as more diversity in commentary and analysis. The Commission seeks comment on whether these sources contribute significantly to the diversity of news sources available to consumers. As the Third Circuit noted, the traditional media continue to be an important news source. Nonetheless, Internet adoption rates continue to grow, leading to changes in how consumers get their news. Because the primary marketplace for news is shifting, the Commission seeks comment on whether the shift in consumption of news supports elimination of the rule. For instance, does the increase in the diversity of news outlets provided by the Internet contribute enough to the marketplace of ideas to ensure that viewpoint diversity would be adequately protected absent this rule? The Commission also notes that the Commission previously has rejected the argument that the use of common facilities by cross-owned stations to gather news, traffic, and weather would be harmful to diversity, because such cost-cutting measures allow the vital information to be available to the public through a greater number of outlets. The Commission seeks comment on how other changes in the media marketplace affect diversity.

133. The Commission also seeks comment on how elimination of the radio/television cross-ownership rule would affect minority and female ownership opportunities. As noted, DCS asserts that significant entry barriers continue to exist for minorities and women in both the traditional and new media industries. Would elimination of the radio/television cross-ownership rule have any effect on such barriers? DCS also states that minority-owned stations are more likely to provide programming geared towards minority audiences and that minority communities are underserved as a result of the lack of minority media ownership. Would elimination of the radio/television cross-ownership rule have any effect on programming geared toward minority audiences?

134. *Digital Transition.* The Commission observes that, following the digital transition for full-power television broadcasters in 2009, the current radio/television cross-ownership rule became at least partially obsolete. The rule relies on analog broadcast television contours as one of its criteria. As broadcast television stations have completed the transition to digital television service and ceased broadcasting in analog, the analog contours are no longer relevant, and comparable digital contours do not exist for all of the analog contours previously employed in the media ownership rules. As discussed in the *NOI,* while the Commission has found the digital noise limited service contour to approximate the larger Grade B contour, the Commission has not found an

equivalent for the smaller Grade A contour, which is used to trigger the radio/television cross-ownership rule. If the Commission were to apply the larger Grade B contour, the Commission could allow entities to own more broadcast stations than was the case with the analog contours. The Commission received no suggestions in filed comments about how to address this problem. Although the Commission does not base its decision to repeal the rule on the rule's use of analog contours and the lack of digital equivalents, the difficulty of creating a consistent rule in the digital age is a factor the Commission has considered. The Commission seeks comment on how it could overcome this difficulty to the extent commenters propose to maintain restrictions on radio/television cross-ownership. In particular, if commenters favor retaining a contour-based rule, the Commission seeks comment on what contour to utilize and how the rule should be applied.

5. Dual Network Rule

a. Introduction

135. Historically, the Commission has concluded that the dual network rule is necessary in the public interest to promote competition and localism. In order to promote these goals, the current dual network rule permits common ownership of multiple broadcast networks, but prohibits a merger between or among the ''top four'' networks (ABC, CBS, Fox, and NBC). The Commission concluded in the *2002 Biennial Review Order* that, given the level of vertical integration of each of the top four networks, as well as their continued operation as a ''strategic group'' in the national advertising market, a top-four-network merger would give rise to competitive concerns that the merged firm would be able to reduce its program purchases and/or the price it pays for programming. The Commission reasoned that these competitive harms would reduce program output, choices, quality, and innovation to the detriment of viewers. The Commission also concluded that allowing a merger of any of the top four networks would harm localism by reducing the ability of affiliates to bargain with their networks for favorable terms of affiliation, diminishing affiliates' influence on network programming, and thus harming the ability of the affiliates to serve their communities. In the *2006 Quadrennial Review Order,* the Commission concluded that the dual network rule continued to be necessary in the public interest to promote competition and localism. The U.S. Court of Appeals for the Third Circuit upheld the Commission's decision to retain the rule, finding that the Commission reasonably relied on several unique features of the top four broadcast networks, such as their vertical integration and their ability to reach a larger audience than other networks. The Court also found that the Commission's description of the media marketplace as ''dynamic'' and ''competitive'' was not inconsistent with its decision to retain the rule, in part, to avoid the damage to competition that a merger of the top four networks would cause.

136. The Commission notes that since its last review significant changes have taken place in the television marketplace. In particular, the number and popularity of non-broadcast sources for video programming continue to grow. Nonetheless, the Commission tentatively finds that the top four broadcast networks continue to possess characteristics that distinguish them from other broadcast and cable networks and therefore still serve a unique role in the electronic media that justifies retaining a rule specific to them. As discussed in more detail below, the top four broadcast networks, as compared to other broadcast and cable networks, achieve substantially larger primetime audiences, which can then be sold at a premium to advertisers that want to reach large, nationwide audiences. Accordingly, the Commission tentatively finds that a top-four network merger would restrict the availability, price, and quality of primetime entertainment programming to the detriment of consumers. The Commission also tentatively finds that a top-four network merger would substantially lessen competition for advertising dollars in the national advertising market, which would reduce the incentives for the networks to compete against each other for viewers by providing innovative, high quality programming. For these reasons, the Commission tentatively concludes that the dual network rule remains necessary in the public interest to promote competition and should be retained without modification. The Commission seeks comment on this tentative conclusion. The Commission also seeks comment on whether allowing a merger of any of the top four networks would harm localism by reducing the bargaining power of affiliates, which would consequently lessen their ability to influence network programming in ways that serve their local communities. The Commission also seeks comment on whether allowing a merger of any of the top four networks would promote localism.

b. Background

137. In the *NOI,* the Commission sought comment on issues related to the dual network rule, including whether the rule remains necessary to protect competition in the program acquisition and national advertising markets. In the current proceeding, very few parties have addressed these issues. Several parties suggest that the dual network rule remains important to promoting the Commission's policy goals. By contrast, both CBS and Fox assert that, in light of changes in the marketplace, the dual network rule is no longer justified and should be eliminated. Specifically, CBS contends that the Commission has failed to identify the distinguishing characteristics of the top four networks that justify a rule specific to those networks, and that greater audience share in comparison to other broadcast and cable networks does not adequately explain why the top four networks should be specifically singled out.

c. Discussion

138. *Competition.* Broadcast networks serve in multiple roles as an intermediary between content creators, advertisers, and local broadcast stations. As a result, the Commission tentatively finds that the top four broadcasters participate, and can affect competition, in more than one market. Specifically, the Commission considers the implications of a top-four network merger for competition in the provision of primetime entertainment programming and competition in the sale of national advertising time.

139. Primetime network programming is generally designed to attract a mass audience, and financing such programming, in turn, requires the substantial revenue that only a mass audience can provide. The top four broadcast networks supply their affiliated local stations with primetime entertainment programming intended to attract mass audiences and the advertisers that want to reach such large, nationwide audiences. By contrast, other broadcast networks target more specialized, niche audiences similar to many cable television networks. The Commission recognizes that, in general, consumers substitute between broadcast and cable networks, and that cable networks earn substantial advertising revenues. Nevertheless, the Commission tentatively finds that the primetime entertainment programming supplied by the top four broadcast networks is a distinct product, the

provision of which could be restricted if two of the four major networks were to merge.

140. First, the audience size for primetime entertainment programming provided by each of the top four broadcast networks remains unmatched by that of any other broadcast or cable network. The primetime audience for all cable networks taken together is greater than that of the broadcast networks and that the gap in size between broadcast and cable network audiences has been narrowing over time. Nonetheless, the average audience size for each of the top four broadcast networks remains significantly larger than the audience size for even the most popular cable networks. For example, over an 11-month period in 2009–2010, the average primetime audience across the four broadcast networks was 8.61 million. During the same period, the highest rated cable networks were USA Network, Nickelodeon, Disney Channel, and ESPN. Their average primetime audience was approximately 2.79 million. Thus, the average broadcast network audience was more than three times larger than the average audience for the highest rated cable networks. Additionally, during the same period, the fifth highest rated broadcast network was Univision, which provides Spanish-language programming, and which had an average primetime audience of 3.62 million. The next highest rated English-language broadcast network was the CW, which ranked sixth overall, with an average primetime audience of 1.78 million. Thus, the average primetime audience for the top four broadcast networks was more than twice as large as that of the fifth highest rated broadcast network, and nearly five times larger than that of the next highest rated English-language broadcast network.

141. Similarly, among individual primetime entertainment programs, the audiences for the top four broadcast networks remain substantially larger than those for other broadcast and cable networks. With the exception of certain individual sports events, cable network programs do not regularly rank among the highest rated television programs. For instance, during the first three months of 2011, the highest rated single episode of a non-sports primetime program on a cable network was an episode of Jersey Shore, which achieved an audience of 8.87 million when it appeared on MTV during the week of January 17–23, 2011. Despite this sizable audience, for the week, a total of 21 non-sports programs that aired on top-four broadcast networks achieved larger audiences. Primetime programs on broadcast networks outside the top four likewise generally achieve smaller audiences than primetime programs carried on the top four networks. For instance, for the 2009–2010 television season, no program from any non-top-four broadcast network ranked among the 100 highest rated broadcast programs.

142. Another indicator of the distinctiveness of the top four broadcast networks is the wide disparity in advertising prices between the top four broadcast networks and cable networks. Some advertisers are willing to pay a premium per viewer for programs that attract larger audiences. As the Information Needs of Communities Report notes, despite a fragmented audience, broadcast television networks still retain some clout, relative to most cable networks, as an effective way for advertisers to reach large audiences. As evidence of this, the top four broadcast networks generally earn higher advertising rates than cable networks. In 2009, among the top four broadcast networks, CBS had the lowest average advertising rate, as measured in cost per thousand views (referred to as cost per mille or CPM), but its CPM was still 38 percent higher than the highest CPM among non-sports cable networks (MTV) and 178 percent higher than the CPM for the highest rated cable network (USA). The appeal of the top four broadcast networks to advertisers seeking large, national audiences is also reflected in data on net advertising revenues. The top-four broadcast network with the lowest net advertising revenue in 2009 was Fox, but it still received more than three times that of any non-top four broadcast network. It also received double that of the highest rated non-sports cable network (USA).

143. The Commission disagrees with the assertion by CBS that greater audience share in comparison to other broadcast and cable networks does not justify a rule specific to the top four networks. The Commission finds that the top four broadcast networks have a distinctive ability to attract larger primetime audiences regularly relative to other broadcast and cable networks, which enables them to earn higher rates from advertisers that are willing to pay a premium for such audiences. Thus, a combination between top-four broadcast networks would reduce the choices available to advertisers seeking large, national audiences, which could substantially lessen competition and lead the networks to pay less attention to viewer demand for innovative, high quality programming. The Commission therefore tentatively concludes that primetime network entertainment programming and national television advertising are each distinctive products, the availability, price, and quality of which could be restricted, to the detriment of consumers, if two of the top four networks were to merge. Accordingly, the Commission tentatively concludes that the dual network rule remains necessary to foster competition in the provision of primetime entertainment programming and the sale of national advertising time. The Commission seeks comment on these tentative conclusions. In particular, the Commission seeks comment on whether the top four networks face competition from any other sources that are also capable of delivering a large, national audience to advertisers, such that they provide a reasonable substitute for the top four networks in the national advertising market. The Commission also seeks comment as to whether the dual network rule is necessary to promote and protect competition in the primetime network entertainment programming and national television advertising markets, or if antitrust laws and the Commission's public interest standard are sufficient for reviewing any possible merger between the four networks.

144. The Commission also seeks comment on whether a merger between top-four broadcast networks would give rise to any other potential competitive concerns. For instance, the Commission seeks comment on whether, as the Commission has previously determined, the level of vertical integration of each of the top four networks is such that a top-four-network merger would give rise to competitive concerns that the merged firm would be able to reduce its program purchases and/or the price it pays for programming. In addition, the Commission seeks comment on the role that the top four broadcast networks play in the provision of national news content. As the Information Needs of Communities Report notes, despite their declining audiences, the three broadcast network evening newscasts (ABC, CBS, and NBC) still draw 22 million viewers—five times the number tuning in to the three major cable news networks (CNN, FOX, and MSNBC) during primetime. The Commission seeks comment on whether a merger among the top four broadcast networks would significantly restrict the availability of diverse sources of national television news. The Commission also seeks comment on whether other sources of news—including cable television, newspapers, and the Internet—are sufficient to ensure a diverse and competitive market

for national news, or whether the dual network rule remains necessary to protect against excessive concentration in this market. The Commission also seeks comment as to whether the dual network rule is necessary to promote and protect competition in a national news market and purchasing or pricing of such programming, or if antitrust laws and the Commission's public interest standard are sufficient for reviewing any possible merger between the four networks.

145. *Localism.* The Commission seeks comment on the continued validity of the Commission's previous finding that the dual network rule is necessary to foster localism. In particular, the Commission seeks comment on potential ways in which a merger among the top four broadcast networks would impair the ability of their affiliates to serve the interests of their local communities. Specifically, does the rule remain necessary to preserve the balance of bargaining power between the top-four networks and their affiliates? Would a top-four network merger reduce the ability of a TV station, in bargaining with its affiliated network, to use the availability of other top independently owned networks as a bargaining tool? Furthermore, would the availability of fewer alternatives give an affiliate less influence on network programming decisions? For instance, would it reduce the ability of an affiliate to engage in a dialogue with a network over the suitability for local audiences of either the content or scheduling of network programming? The Commission also seeks comment as to whether the dual network rule is necessary to ensure options and preserve the bargaining power and independence of affiliates, or if antitrust laws, the Commission's public interest standard, and other Commission rules are sufficient for reviewing any possible merger between the four networks. In addition, the Commission seeks comment on whether the growth of alternate sources for local content should have any impact on the Commission's decision whether the dual network rule remains necessary to promote localism.

D. Diversity Order Remand/Eligible Entity Definition

146. The Commission seeks comment in this *Notice of Proposed Rulemaking* on issues that previously were being addressed in a separate rulemaking proceeding focused on enhancing the diversity of ownership in the broadcast industry, including by increasing ownership opportunities for minorities and women (the Diversity proceeding). As explained below, the Third Circuit in *Prometheus II* remanded the measures adopted in the Commission's 2008 *Diversity Order* that relied on a revenue-based ''eligible entity'' standard and emphasized that the actions required on remand from the *Diversity Order* should be completed ''within the course of the Commission's 2010 Quadrennial Review of its media ownership rules.'' Accordingly, the Commission seeks comment in this proceeding on how the Commission should respond to the court's remand and on other actions the Commission should consider to increase the level of broadcast station ownership by minorities and women.

147. *Current Diversity Initiatives.* The Commission believes that promoting diversity of ownership among broadcast licensees and expanding opportunities for minorities and women to participate in the broadcast industry are important parts of the Commission's mission under the Communications Act. The Commission currently has a number of rules and initiatives in place that are designed to advance these objectives. For example, although the Third Circuit remanded the provisions adopted in the *Diversity Order* that relied on the eligible entity definition, it expressly upheld a number of other actions the Commission has taken to promote diversity of ownership. These actions include, among others, a ban on discrimination in broadcast transactions, a ''zero tolerance'' policy for ownership fraud, and a requirement that non-discrimination provisions be included in advertising sales contracts. Similarly, the *Prometheus II* opinion did not question the Commission's decision to reinstate the failed station solicitation rule (FSSR), which is intended to provide out-of-market buyers, including minorities and women, with notice of a sale and an opportunity to bid on stations. Accordingly, these measures remain in place.

148. Over the past several years, the Commission also has implemented recommendations from the Advisory Committee on Diversity for Communications in the Digital Age (Advisory Committee) designed to enhance opportunities for minorities, women, and other underrepresented groups to participate in the broadcast industry. For example, based on a recommendation from the Advisory Committee, the Commission's Office of Communications Business Opportunities (OCBO) hosts annual capitalization strategies workshops in order to facilitate lending to and investment in minority- and women-owned entities. Most recently, OCBO convened a Capitalization Strategies Workshop that focused on capital acquisition for small, women- and minority-owned businesses in broadcasting, telecommunications, and related fields. In addition, as explained further below, the Commission currently is considering a recommendation from the Advisory Committee to afford bidding credits in license auctions to persons or entities that have overcome substantial disadvantage. The Commission seeks input in this *Notice of Proposed Rulemaking* on how the Commission most effectively can expand upon its diversity initiatives at the same time that the Commission addresses the Third Circuit's concerns and other legal considerations, including potential impediments to affording licensing preferences to minorities and women under current standards of constitutional law.

149. *Eligible Entity Standard and* Prometheus II *Remand.* Aside from implementing the initiatives noted above, the Commission also has sought to promote diversity through the measures adopted in the *Diversity Order* that incorporated the eligible entity definition. As discussed below, the Third Circuit in *Prometheus II* vacated and remanded each of these measures. Accordingly, the Commission seeks comment on how the Commission should respond to the court's criticisms of the Commission's previous eligibility standard, how the Commission should proceed with respect to the measures that previously relied on that standard, and any other actions the Commission should consider to advance its diversity objectives.

150. As defined in the *Diversity Order,* an ''eligible entity'' is any entity that qualifies as a small business under revenue-based standards that have been established by the Small Business Administration (SBA). In adopting measures based on this definition, the Commission concluded that it would ''be effective in creating new opportunities for broadcast ownership by a variety of small businesses and new entrants, including minorities and women.'' The Commission also noted that adopting this ''race- and gender-neutral definition'' would avoid the ''constitutional difficulties'' associated with a race-conscious definition ''that might create impediments to the timely implementation'' of the measures adopted in the *Diversity Order.* In response to commenters' requests that the Commission take direct action to increase minority and female ownership of broadcast stations, however, the Commission asked for comment in the *Third Further Notice of Proposed*

Rulemaking to the *Diversity Order* (73 FR 28400, May 16, 2008, FCC 07–217, rel. Mar. 5, 2008) (the *Diversity Third FNPRM*) on whether it should adopt an alternative, race-conscious eligibility definition as well as other potential definitions. The alternative definitions proposed in the *Diversity Third FNPRM* are discussed below.

151. In *Prometheus II,* the Third Circuit held that the Commission's revenue-based eligible entity definition was arbitrary and capricious. While noting that other actions in the *Diversity Order* ''take a strong stance against discrimination and are no doubt positive,'' the court found that the Commission failed to show that measures based on the eligible entity definition ''will enhance significantly minority and female ownership, which was a stated goal of'' the rulemaking proceeding in question. The court further observed that, in discussing its decision to adopt this definition, the Commission had referred ''only to 'small businesses,' and occasionally 'new entrants,' as expected beneficiaries.'' In addition, the court expressed doubt that the Commission would be able to provide an adequate explanation on remand of how ''measures using this definition would achieve the stated goal'' of increasing broadcast ownership by minorities and women. In particular, the court pointed to data cited by the Commission showing that ''minorities comprise 8.5 percent of commercial radio station owners that qualify as small businesses, but 7.78 percent of commercial radio stations as a whole — a difference of less than 1 percent.'' The court also noted that, in adopting the eligible entity standard, ''[t]he Commission referenced no data on television ownership by minorities or women and no data regarding commercial radio ownership by women.''

152. Finding that the Commission had not provided a ''sufficiently reasoned basis for deferring consideration'' of the alternative definitions proposed in the *Diversity Third FNPRM,* the court specifically directed it to consider those proposals within the course of the 2010 Quadrennial Review. The Third Circuit also admonished that the Commission could not further delay its consideration of its prior proposals simply because of the constitutional difficulties they may present. To the extent that the Commission ''requires more and better data'' in order to complete its analysis, the court directed the Commission to ''get [such] data and conduct up-to-date studies.''

153. *Data Collection Concerning Minority and Female Ownership.* Since the adoption of the *Diversity Order,* the Commission actively has sought to improve the broadcast ownership information available to it and has gathered additional data regarding the current levels of minority ownership of broadcast stations. In 2009, the Commission implemented a number of changes to its Form 323 ownership reports to further its goal that the data reported in the form, including data regarding minority and female broadcast ownership, are reliable, accurate, searchable, and aggregable. In addition, the Commission set a new uniform biennial filing deadline for the Form 323 and expanded the class of entities required to file the form. The Commission requires all full power commercial broadcast stations and all low power television stations, including Class A stations, to file the new form biennially. It also eliminated the exemption from the biennial reporting requirement that formerly applied to sole proprietorships and partnerships of natural persons that are commercial broadcast licensees. In addition, all attributable interest holders must now obtain unique FCC registration numbers for purposes of filing the form in order to facilitate cross-referencing of reported ownership interests.

154. The Commission's first data collection that incorporates these changes reflects ownership interests as of November 1, 2009. The deadline for filing the data with the Commission was July 8, 2010, and on February 28, 2011 the Commission released to the public a data set compiling all of the ownership reports that were filed. That release included descriptions of the data and instructions on accessing them to permit interested parties to analyze and manipulate the data. This data set represents the first ''snapshot'' of broadcast ownership data in a series of planned biennial reviews that collectively should provide a reliable basis for analyzing ownership trends in the industry, including ownership by minorities and women.

155. Commission staff has reviewed the 2009 biennial ownership filings of full power commercial broadcast television stations in order to determine the number of stations controlled by reported racial and ethnic categories. For purposes of this analysis, the Commission examined the race or ethnicity of owners with attributable voting interests in the entity that ultimately owns the station license and defined a controlling interest as an interest that exceeds 50 percent alone or in the aggregate. There were 1,394 full-power commercial television stations in the United States as of November 1, 2009, the information collection date. According to the Commission's review of the 2009 data, 29 of these stations, or 2.1 percent, are minority owned. Of those 29 stations, 9 have Black or African-American owners, accounting for 0.6 percent of all stations. American Indian or Alaska Native owners control 10 stations, or 0.7 percent, while Asian owners control nine stations, or 0.6 percent. Native Hawaiian or Pacific Islanders own one station, or 0.1 percent. Hispanic or Latino owners control 36 stations, or 2.6 percent. By comparison, the Commission's review showed that non-Hispanic White owners control 1,021 stations, or 73.2 percent of the total stations. In addition, the Commission was not able to categorize the race or ethnicity of the ownership for 244 stations, representing 17.5 percent of the total stations, because at least 50 percent of the ownership of these stations was not reportable via the Form 323. Information was unavailable for 64 stations, or 4.6 percent.

156. Several of the Media Ownership Studies provide additional analysis of these subjects. These and other studies are discussed more fully in Section V herein. Media Ownership Study 7 considers the relationship between ownership structure and the provision of radio programming targeted to African-American and Hispanic audiences. The study finds that Black and Hispanic listeners have very different listening preferences from the White population. The study also finds that although most minority-targeted stations are not minority-owned, most minority-owned stations target minority listeners, and the presence of minority-owned stations in a market appears to raise the amount of minority-targeted programming. Media Ownership Study 2 concludes that consumers value diversity of opinion and community news to varying degrees that generally increase with age, education, and income. The study also examined the value listeners place on multiculturalism, however, which was found to decrease with age. The study further concludes that White male consumers generally do not value multiculturalism.

157. The Commission recognizes that the data currently in the record of this proceeding are not complete and are likely insufficient either to address the concerns raised in *Prometheus II* or to support race- or gender-based actions by the Commission. Although the Commission would prefer to be able to propose specific actions in response to the Third Circuit's remand of the measures relying on the eligible entity

definition in this *Notice of Proposed Rulemaking,* the Commission believes that making legally sound proposals would not be possible based on the record before us at this time. Accordingly, the Commission plans to undertake the following actions in preparation for the 2014 broadcast ownership review to establish with the requisite foundation and clarity what additional policies can be implemented promoting greater broadcast ownership diversity, including female and minority ownership: (1) Continue to improve the Commission's data collection so that the Commission and the public may more easily identify the diverse range of broadcast owners, including women and minorities, in all services the Commission licenses; (2) Commission appropriately-tailored research and analysis on diversity of ownership; and (3) Conduct workshops on the opportunities and challenges facing diverse populations in broadcast ownership. In addition, the Commission asks interested parties to supplement the record and provide any and all data available that can complete a picture of the current state of ownership diversity, including minority and female ownership in the broadcast industry and to justify any prospective actions the Commission may take on remand.

158. *Options for Reconsideration of the Eligible Entity Standard.* The Commission seeks comment herein on a number of actions it could take with respect to the remanded eligible entity definition. With respect to these proposals and any others that may be suggested, the Commission emphasizes that interested parties should squarely address the potential legal impediments to any specific approach. The Commission asks commenters to explain the constitutional law analysis that would apply to, as well as the potential constitutional problems with, any proposals for a new eligibility definition. Commenters should explain in detail, based on relevant case law, whether and how the Commission could overcome the application of strict or intermediate constitutional scrutiny to any race- or gender-based standard. Commenters also should explain whether and how proposals can be supported by data and whether they can be applied in a consistent and rational manner.

159. As an initial matter, the Commission invites comment regarding the possibility of reinstating the preexisting eligible entity definition. Recognizing the Third Circuit's apparent skepticism that the Commission would be able to demonstrate on remand that the revenue-based eligibility definition serves the Commission's goal of increasing broadcast ownership by minorities and women, the Commission asks commenters to address whether or not there is additional evidence available that would show a stronger connection between according licenses preferences to small businesses and promoting this goal. Is there evidence demonstrating that there are now more small businesses, particularly those that are owned by minorities or women, that own broadcast outlets than there were when the eligible entity standard was put in place? The Commission strongly encourages parties to supply any such information to the Commission. The Commission also notes the Third Circuit's statement that ''it is hard to understand how measures using [the eligible entity] definition would achieve the stated goal'' of increasing broadcast ownership by minorities and women in light of Commission data showing that ''minorities comprise 8.5% of commercial radio station owners that qualify as small businesses, but 7.78% of the commercial radio industry as a whole. * * *'' The Commission seeks comment on whether this comparison of minority representation in different segments of the radio industry accurately reflects the potential impact of the eligible entity standard on minority and female ownership. In addition, the Commission invites input on whether it is possible that the preexisting definition would have a more substantial impact on minority and female station ownership if the Commission modifies the licensing preferences to which the definition applies. As discussed in more detail below, the Commission invites commenters to propose changes to these preferences and to explain how such changes would promote the Commission's minority and female ownership objectives.

160. Alternatively, should the Commission consider reinstating the eligible entity definition to support other policy objectives aside from the promotion of minority and female station ownership? For example, should increasing station ownership by small businesses be considered an independent policy goal in this proceeding and, if so, would readopting the preexisting eligibility definition be a reasonable and effective means of promoting this objective? Several provisions of the Communications Act require the Commission to promote the interests of small businesses. *See, e.g.,* 47 U.S.C. 309(j)(3)(B) (obligating the Commission to ''disseminat[e] licenses among a wide variety of applicants, including small businesses'' in authorizing the Commission to award licenses via competitive bidding); *see also* 47 U.S.C. 257(a) (directing the Commission to identify and eliminate ''market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services * * *''); 47 U.S.C. 614(a)(i) (establishing a ''Telecommunications Development Fund'' to, among other purposes, ''promote access to capital for small businesses in order to enhance competition in the telecommunications industry''). The Commission also asks commenters to consider whether creating opportunities for small businesses to participate in the broadcast industry via the eligible entity standard would serve the Commission's traditional goals of fostering viewpoint diversity, localism, and competition. In the *Diversity Order,* the Commission suggested that the use of the eligible entity standard would ''result in a wider array of programming services, including some that are responsive to local needs and interests and audiences that are underserved.'' In this regard, the Commission ''anticipate[d] that small businesses will be more likely than large corporations to have ties to the communities that they serve, and thus be more attuned to local needs and interests.'' The Commission seeks comment on this prediction and on other ways in which the continued use of the eligible entity definition could serve the Commission's traditional policy objectives.

161. The Commission also seeks comment on whether there are other race- and gender-neutral standards for defining eligible entities that the Commission should consider for the measures adopted in the *Diversity Order* and any others the Commission may implement in the future. Given the Third Circuit's conclusion that the Commission failed to demonstrate a connection between the previous revenue-based definition and the Commission's stated diversity goals, commenters should supply specific evidence demonstrating why a proposed definition is likely to serve the Commission's policy objectives, especially the Commission's goal of increasing station ownership by minorities and women. In addition, the Commission asks commenters to discuss any potential legal problems as well as any administrative issues associated with their proposals.

162. In the *Diversity Third FNPRM,* the Commission sought comment on

replacing the eligible entity standard with a standard based on the SBA's definition of socially and economically disadvantaged businesses (SDBs) used for purposes of its Business Development Program. African Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Pacific Americans, and Native Americans are presumed to qualify for the Business Development Program, and other individuals may qualify for the program if they can show by a preponderance of the evidence that they are disadvantaged. The Commission again seeks comment on this proposal in this proceeding. In addition, the Commission seeks comment on whether there is an alternative race-conscious and/or gender-specific standard that the Commission should adopt.

163. To be lawful, race-based and gender-based governmental action must satisfy the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Supreme Court has established that race-based classifications are subject to strict scrutiny and may be upheld ''only if they are narrowly tailored measures that further compelling governmental interests.'' Gender classifications are subject to intermediate scrutiny, under which the government's actions must be substantially related to the achievement of an important objective. Commenters advocating a race-conscious classification, therefore, should explain, based on relevant judicial precedent and empirical data, how such a classification would satisfy the strictest level of constitutional scrutiny. To justify the adoption of a race-conscious standard, would it be possible for the Commission to demonstrate a compelling interest in fostering viewpoint diversity, redressing past discrimination, or some other interest? If the Commission could establish such an interest, how could the Commission demonstrate that a race-based standard would be a narrowly tailored means of achieving this interest? Similarly, could the Commission meet the relevant constitutional standards for a gender-specific standard? Commenters also should explain what data the Commission would need in order to adequately support a race- and/or gender-based definition. Commenters should provide relevant data and are encouraged to submit peer-reviewed studies.

164. The Commission also sought comment in the *Diversity Third FNPRM* on an ''individualized full-file review'' approach to awarding the preferences adopted in the *Diversity Order.* Under this proposal, applicants would be accorded licensing preferences if they could demonstrate that they have overcome ''significant social and economic disadvantages.'' After the release of the *Diversity Third FNPRM,* the Media and Wireless Bureaus sought comment on a proposal made by the Advisory Committee to award bidding credits in licensing auctions to applicants that demonstrate that they have overcome a ''substantial disadvantage.'' The Commission seeks comment on the use of this type of standard for purposes of the licensing preferences adopted in the *Diversity Order.* Would these standards, both of which are based on individualized reviews to determine whether applicants have overcome considerable disadvantages, be subject to strict judicial scrutiny and would they be able to survive this level of constitutional analysis? Alternatively, would it be feasible for the Commission to conduct such reviews in a race- and gender-neutral manner that would be subject to a lower level of constitutional scrutiny? If so, would the Commission be able to satisfy the Third Circuit's concern that the use of a race- and gender-neutral approach may not materially advance the Commission's minority and female ownership goals? In addition, the Commission asks commenters to consider how the Commission could ensure that the highly individualized reviews of broadcast applications that would be required under a substantial disadvantage standard could be administered in a sufficiently objective and consistent manner as well as in accordance with First Amendment values. The Commission also would like interested parties to comment on the Commission resources that would be required to conduct, as a matter of course, highly fact-specific reviews of this nature. What data would the Commission need to support the adoption of this type of standard? The Commission seeks comment as to the practicability of implementing such a standard and what information would be required by the Commission to determine potential eligibility. What privacy concerns, if any, are raised by collecting such information? Would the Commission have statutory authority to adopt it? To the extent that additional data are needed, commenters are encouraged to provide such information.

165. In addition, the Commission seeks comment on any other approaches it should consider. Commenters advocating alternative proposals should explain how the proposal would satisfy the applicable level of constitutional scrutiny, how it would advance the Commission's policy goals, how the Commission could address any administrative burdens or practical considerations inherent in the proposed approach, and what data the Commission would need in order to justify it. Again, commenters are strongly encouraged to supply any relevant data to the Commission.

166. Finally, the Commission asks commenters to consider whether the Commission should decline to adopt any new eligibility standard specifically aimed at increasing minority and female station ownership in light of the record in front of the Commission in this proceeding. In particular, the Commission asks parties to consider, on the one hand, the Third Circuit's dissatisfaction with the Commission's prior race- and gender-neutral approach. On the other hand, the Commission asks parties to consider the high constitutional hurdles the Commission would face if it were to adopt an expressly race- or gender-based standard on remand and the data that would be necessary to justify such a standard prior to the completion of the 2010 Quadrennial Review. While the Commission continues to believe that promoting minority and female ownership is an important goal, the Commission also recognizes that implementing a program expressly aimed at this goal in the context of this proceeding would require the support of a substantial evidentiary record that the Commission has not yet been able to amass. Accordingly, the Commission seeks comment on how the Commission most effectively could continue to pursue its longstanding goals of promoting diversity among broadcast licensees, and especially of fostering broadcast ownership by minorities and women, in the event that the Commission determines that it is unable to support a new eligibility standard in this proceeding.

167. *Measures Relying on Eligible Entity Standard.* In addition to seeking comment on the eligible entity definition, the Commission also seeks comment on how the Commission should proceed with respect to the licensing preferences that previously relied on this definition, each of which was remanded in *Prometheus II.* As numbered in the *Diversity Order,* these measures include: (1) Revision of Rules Regarding Construction Permit Deadlines; (2) Modification of Attribution Rule; (3) Distress Sale Policy; (4) Duopoly Priority for Companies that Finance or Incubate an Eligible Entity; (5) Extension of Divestiture Deadline in Certain Mergers;

and (6) Transfer of Grandfathered Radio Station Combinations to Non-Eligible Entities. The Commission seeks comment on whether or not the Commission, either in this proceeding or a separate rulemaking, should attempt to reinstate any of these measures. In particular, if the Commission decides to readopt the preexisting eligible entity definition on remand, should it also reinstate each of the measures that rely on this definition? Alternatively, if the Commission adopts a new standard to replace or supplement the eligible entity definition, should the Commission apply that revised standard to each of the above-listed measures, but otherwise reinstate them in their current form? Are there reasons why the Commission should either decline to readopt any of these measures on remand or make any changes to them if the Commission implements a new eligibility standard? The Commission also seeks comment on whether reinstating these measures, either in their current form or with proposed changes, would be an effective means of advancing the Commission's policy goals and whether such action would be consistent with applicable constitutional law standards. The Commission further invites comment on whether the Commission would need additional data in order to justify the readoption of any of these measures and, if so, the Commission requests that such data be submitted. By contrast, if the Commission decides that it is not feasible to replace the eligible entity definition and therefore declines to adopt any new definition on remand, then, absent further action by the Commission, each of the measures vacated by the court would remain void. Accordingly, these measures would be rescinded by the Commission.

168. The Commission also sought comment on a number of additional measures intended to promote diversity among broadcast licensees in the *Diversity Third FNPRM.* Several of these proposals rely on the now vacated eligible entity definition or another proposed eligibility standard. As set forth in the *Diversity Third FNPRM,* these proposals include: (1) Share-Time Proposals; (2) Retention of AM Expanded Band Owners' Station if One Station Is Sold to an Eligible Entity; (3) Structural Waivers for Creating Incubator Programs; and (4) Proposals of the National Association of Black Owned Broadcasters and the Rainbow/PUSH Coalition. A number of parties filed comments on these proposals in response to the *Diversity Third FNPRM.* With regard to the third proposal, MMTC recently has urged the Commission to take action on a similar Minority Ownership Incubation Proposal. Specifically, MMTC has proposed an incubation program pursuant to which the local radio ownership rule would be waived for radio broadcasters that engage in one of six ''Qualifying Activities,'' including (1) selling or donating a commercial radio station to a qualified entity; (2) entering into a local marketing agreement with an independent programmer for a five year period for the use of an FM HD–2 or HD–3 channel; (3) financing one year of operations and providing in-kind technical and engineering assistance or equipment that enables an eligible entity to reactivate and restore to full service a dark commercial or noncommercial broadcast station; (4) donating a commercial or noncommercial station to an Historically Black College or University, an Hispanic Serving Institution, an Asian American Serving Institution, or a Native American Serving Institution; (5) ''providing loans, loan guarantees, lines of credit, equity investments or other direct financial assistance to a qualified entity to cover more than 50 [percent] of the purchase price of a radio station''; or (6) engaging in another action that is ''likely to enhance radio station ownership opportunities for qualified entities.'' Under MMTC's proposal, the Qualifying Activity must occur in either the same market as or a larger market than the market for which the waiver is requested. Radio broadcasters that engage in Qualifying Activities would be eligible to receive an unlimited number of waivers of the AM and FM subcaps and a specified number of waivers of the local radio ownership caps based on market size. In light of the Third Circuit's remand, the Commission again seeks comment on the proposals in the *Diversity Third FNPRM,* as well as those that have been suggested more recently, in this proceeding. In particular, the Commission asks for input on how the court's remand of the provisions relying on the eligible entity definition should impact the Commission's consideration of each of these proposals. The Commission also seeks comment on whether the adoption of these measures would advance the Commission's policy objectives and on the legal implications of implementing these proposals. Further, the Commission invites parties to comment on whether the Commission would need additional data in order to justify any of these measures and encourage parties to provide any data that may be helpful to the Commission's analysis.

169. *Additional Measures To Further the Commission's Diversity of Ownership Goals.* The Commission also seeks comment on any other measures it should consider that would advance the Commission's longstanding goal of having a wide diversity of broadcast licensees and, more specifically, of increasing the number of minority- and women-owned broadcast stations. In addition to the measures noted above, the *Diversity Third FNPRM* sought comment on several other proposals designed to increase participation in the broadcast industry by new entrants and small businesses, including minority- and women-owned businesses. These proposals include: (1) Opening FM Spectrum for New Entrants; (2) Must-Carry for New Class A Television Stations; and (3) Reallocation of TV Channels 5 and 6 for FM service. The Commission seeks to refresh the record on these proposals in this proceeding. The Commission also asks commenters to suggest any additional actions the Commission should consider to advance its important diversity objectives. For example, MMTC has suggested that the Commission seek to reinstate and expand its previous Tax Certificate Policy by coordinating with the White House on draft legislation. The Commission asks commenters specifically to explain how their proposals would serve the Commission's goals and whether they would satisfy relevant constitutional law standards.

E. Media Ownership Studies

170. To provide data on the impact of market structure on the Commission's policy goals of competition, localism and diversity, the Commission has commissioned eleven Media Ownership Studies, which are listed in Appendix A and have now been completed. The economic studies were completed and subject to formal peer review during the period January to July 2011. The studies, peer reviews, and author comments on the peer reviews are available on the Commission's media ownership Web site at *http://www.fcc.gov/encyclopedia/2010-media-ownership-studies.* The Commission invites interested parties to submit any comments on the studies on the same comment dates indicated on the first page of this document.

171. As discussed below, each of these studies defines a relevant performance metric with respect to one or more of the three policy goals and examines how results vary across markets with differing ownership

structures. Generally, the research was designed to relate relevant performance metrics directly to changes in ownership of broadcast facilities in local markets, the attribute of the market that the Commission's rules directly affect. In some cases the studies found useful and important correlations. In other cases variations were found across markets but with little correlation to local market ownership structure. The Commission seeks comment on how to interpret and apply these results. Are there other statistical studies available that the Commission should consider that relate relevant performance metrics to market structure using statistical analysis of a reasonably large sample of markets? Are there individual market case studies available that are relevant and, if so, what role should they have in the Commission's deliberations?

1. Studies Relating to Competition

172. With standard private goods, a study of competitive performance would normally begin with an examination of the relationship between price and marginal cost. Broadcast television and radio programming do not have end user prices, so this approach cannot be implemented here. This leaves two other options. First, the Commission can examine television viewing and radio listening on the assumption that, other things being equal, higher viewing and listening levels in a market are associated with higher consumer satisfaction (the Commission values competition because it provides high levels of consumer satisfaction). Second, the Commission can survey consumers about their valuation of the media environment. Competition can benefit consumers not only by delivering a valued mix of programming at a point in time, but also by promoting innovation. The Commission's slate of studies included both approaches to the direct assessment of consumer satisfaction and also examines one manifestation of innovation. The Commission tentatively concludes that these metrics are appropriate to analyze competition and seek comment on that conclusion, as well as the structure and conclusions of the studies described below.

173. Media Ownership Study 1 examines television audience ratings during parts of the day when programming is locally selected (in particular, dayparts other than prime time, because most prime time programming is network selected). The study found no significant relationship between variations in viewing and variations in market structure across markets. The Commission seeks comment on the use of these metrics to measure competition, as well as the results of Media Ownership Study 1.

174. Media Ownership Studies 5 and 7 each provide some analysis of variations across markets in radio listening. Media Ownership Study 5 examines listening to news radio stations. It finds no significant correlation between market structure and listening, although it does find that the addition of a public news station has a significant impact on news listening. In many if not most markets, there is not more than one public news station, so the results are plausibly understood as suggesting that adding the first public news station in a market has a significant effect. It is not clear that adding additional public news stations would have the same effect. The Commission seeks comment on the structure and conclusions of Media Ownership Study 5, including how the Commission should consider the impact of public news stations on competition given the results of the study.

175. Media Ownership Study 7 focuses on the provision of radio programming to minority audiences. It first documents the significant differences in listening patterns across the Black and White and across the Hispanic and non-Hispanic demographic groups. The study also examines the impact of market structure on listening with inconclusive results. The Commission seeks comment on the design of Media Ownership Study 7, as well as its results with respect to radio listening, and what, if anything, those results can contribute to the Commission's analysis.

176. Media Ownership Study 2 utilizes survey data as a basis for estimating consumers' willingness to pay for (*i.e.,* valuation of) various characteristics of their media environment (diversity of opinion, community news, multiculturalism, and advertising). The portion of the Media Ownership Study 2 analysis most directly related to competition is the study of advertising and consumers' revealed willingness to pay for reductions in it. Some past research has interpreted the amount of advertising as a kind of ''price'' that consumers must pay to receive television programming. The market structure analysis in Media Ownership Study 2 focuses on the number of television voices in the market, and the results appear to show that an increase raises the amount of advertising. The Commission seeks comment on whether the characteristics used in Media Ownership Study 2 to measure consumer satisfaction adequately measure total consumer satisfaction. In particular, the Commission seeks comment on the extent to which correlations between market structure and the amount of advertising in a market provide a useful proxy for competition in the marketplace. Commenters who argue that important elements of the media environment are missing from the study are requested to indicate how consumer satisfaction is affected by the missing elements as well as how the missing elements are likely to be correlated with the elements of the media market structure the Commission's ownership rules can influence.

177. Media Ownership Study 10 examines how the structure of the television market has influenced the increase in television stations' use of multicasting. Innovation as evidenced by the spread of technological advances is another area where competition in the media markets can be observed. One could view increases in multicasting as the result of competition among television stations in a market. The study offers two measures of multicasting: The total number of multicast channels in the market and the average number of multicast channels per television station in the market. The study finds little evidence that variations in ownership structure affect the extent of multicasting. Rather it appears that other market characteristics, such as the market size and the number of television stations operating in the market, are more relevant factors. The Commission seeks comment on the use of multicasting as a metric to study innovation and competition in the market, including whether one measure used in Media Ownership Study 10 is a more appropriate one than the other.

2. Studies Relating to Localism

178. The Commission sought to measure localism, in part, by looking at the effect of local market structure on the quantity of local news and public affairs programming provided at both the market level and the station level. Media Ownership Study 1 examines a number of factors relating to the quantity and quality of local information and correlates that information with the structure of the local media market. In this study, quality is measured by using ratings as the variables to determine how much people prefer certain types of programming, including local news programming. The study does not identify a relationship between ownership structure and local news ratings or hours of programming. The Commission seeks comment on how

well Media Ownership Study 1 measures the degree to which the localism needs of the local population are being served. The study defines television ratings, restricted to the evening time period, as a reasonable measure for the quality of the local television content in the market. Does a measure of the rating of local news provide a better measure of localism than a measure of all content viewing during this period? Should the Commission's localism metric necessarily rely on consumer preference? Media Ownership Study 1 also examines three measures of the amount of news available in the market: The number of news formatted radio stations, the number of hours of local news, and daily newspaper circulation. Is the number of news formatted radio stations an appropriate measure of localism in the absence of information on the type of news carried by the stations? Would one expect the amount of local news on a news formatted station to vary across markets in a predictable manner? Is the circulation of daily newspapers in a market a reasonable measure of the availability of local content? How should it be interpreted? What, if anything, does a high newspaper circulation level indicate about local content on television and radio stations in the same market?

179. Media Ownership Study 4 also provides an analysis of the quantity of local television news and public affairs programming. Media Ownership Study 4 finds that local news and public affairs minutes provided in a market increases with the number of television stations and the number of Big Four (ABC, NBC, CBS, Fox) affiliates in the market. The presence of a newspaper-television combination in a market appears to reduce total local news minutes in the market, even though the cross-owned station itself produces more local news than otherwise comparable stations. At the station level, Media Ownership Study 4 finds that radio-television cross-ownership appears to increase local news. Superficially Media Ownership Study 1 and Media Ownership Study 4 appear similar because each measures the quantity of local news. The Commission notes, however, that the sources each study uses to catalog the amount of news are different. In addition, the empirical models differ. How should the Commission weigh each of these studies? Is one data source superior to another? Media Ownership Study 4 examines individual station and market behavior. How should the Commission weigh conflicting results between market outcomes and station behavior?

180. Media Ownership Study 5 examines the prevalence of news formatted radio stations and the listenership of those stations. The data for this study do not separate local and national news programming or account for news programming on stations that are not designated as news formatted. Is the news content of news-formatted stations sufficiently local that the Commission can use the number of such stations as a reliable metric for the amount of localism in a radio market? The study also analyzes usage of news, via the overall ratings of the news-formatted radio stations. Are ratings a sufficient measure of the quality of the local content provided by the station? The Commission notes that the study examines only radio markets defined by Arbitron, which tend to be in the more populous areas of the country. Should the Commission expect the more rural areas to differ? The study concludes there are few significant relationships between news formatted stations and ownership structure. The study does provide weak evidence, however, that an increase in the size of the largest local owner group is associated with an increase in the number of news stations and the number of different news formats offered in the market. The Commission seeks comment on these conclusions.

181. Media Ownership Study 6 examines the state of local news on the Internet to determine whether the Internet provides a net increase to media diversity in local markets. Media Ownership Study 6 first determines which news sites are not affiliated with a traditional media outlet such that they can be considered a new or independent news source. The study provides data on online local news sites within the top 100 U.S. television markets that reach more than a minimum threshold of traffic. Media Ownership Study 6 concludes that there is a very limited amount of local news on the Internet that is provided by organizations that are not broadcasters or print media organizations. The Commission tentatively concludes from Media Ownership Study 6 that, while the potential of the Internet for local, or even hyper-local, news is great, very few such sites today reach a significant audience, at least in the top 100 markets. The Commission seeks comment on that tentative conclusion. The Commission also notes that the analysis is based upon the most widely visited sites. Is it possible that a sufficient number of lightly visited sites carrying content produced by non-traditional media exist such that they act as a reservoir of local content available to consumers? If not, are the barriers to entry into Web publishing sufficiently low such that a failure by broadcasters to provide consumers with their desired level of local news and information will attract competitors? Does the current relative absence of competitors provide any indication of how well the traditional media are serving the needs of consumers?

182. Media Ownership Study 3 examines public knowledge and civic participation to determine whether consolidation results in a more or less informed public. Media Ownership Study 3 considers several metrics of civic engagement, including knowledge of political candidates and issues, as potential indicators of how well the media environment supplies information about local issues. It finds little relationship between media market structure and consumers' knowledge about presidential and congressional candidates, interest in politics, or turnout at the polls. The peer reviewer raised several questions about the usefulness of these particular measures of civic knowledge and engagement. Are the metrics reliable indicators of such characteristics? The study does find a relationship between political participation and political advertising on television. Could there be a connection that Media Ownership Study 3 did not measure between market structure and a political candidate's decision to advertise in that market, which influenced civic knowledge and participation? The Commission seeks comment on these issues.

183. Finally, Media Ownership Study 2, discussed above in the Competition section, provides the Commission with information on the relative value consumers place on the Commission's diversity and localism goals. When examining the influence of market structure on consumer valuation, the study finds that the number of television voices does not have an impact on the consumer's perception of the amount of community news provided. The Commission notes that the average consumer places a higher value on opinion diversity and local news content than on content diversity. How should the Commission evaluate this trade-off? Is the valuation by the average consumer the most appropriate measure or should the Commission look at the valuations broken down by demographic groups?

3. Studies Relating to Diversity

184. In commissioning ownership studies on diversity, the Commission elected to measure the availability of news and civic engagement in local markets as it relates to local market structure in a variety of ways, as described below. The Commission tentatively concludes that these metrics are appropriate to analyze diversity and seek comment on that conclusion, as well as the individual studies described below. Media Ownership Study 5 examines whether ownership structure impacts the availability and listenership of radio stations with a news format in local radio markets, as discussed above. Markets with more news formatted radio stations would be considered to have a greater level of program diversity. The study concludes there is no evidence that newspaper-radio cross-ownership increases news variety or listening. As discussed above, the study provides weak evidence that an increase in the size of the largest local owner group is associated with an increase in the number of news stations and the number of commercial news varieties present in the market. Are these format categories for news and information useful measures of program diversity?

185. The Commission also assessed diversity in Media Ownership Study 2. The study analyzes the existing and preferred quantity of information of interest specifically to women and minorities, which it refers to as multiculturalism. Analysis of the survey results allowed the researchers to estimate the value consumers place on increased amounts of this media market characteristic. The Commission tentatively concludes that what the study labeled as multiculturalism is a useful, though not singular, indicator of the level of program diversity in the market. The survey asked consumers about their media environments overall rather than the characteristics of a particular medium such as radio or television. When examining the influence of market structure on consumer valuation, the study finds that the number of television voices has a significantly positive impact on consumers' valuation of opinion diversity and multiculturalism, even after accounting for the number of stations in the market. Examining the effect of a combination of two television stations in a market, the study finds such a combination leads to a loss in average consumer welfare which is greater in smaller markets. The study finds that the combination does benefit consumers due to a reduction in the perceived amount of advertising. While the changes in consumer welfare from such a transaction vary significantly by market size for opinion diversity and advertising, the effect on multiculturalism varies substantially less by market size. How should the Commission assess consumers' satisfaction against the overall media environment when balancing the benefits of program diversity with any possible countervailing effects?

186. Media Ownership Study 8B directly measures the diversity of content by measuring the diversity of viewpoints discussed on local television news programs. The study catalogs words used in broadcasts and then measures variation among stations in a market. Viewpoint diversity in this study is considered in terms of diversity in discussions of political figures, issues, and local regions. How should each of these measures of content diversity be weighted? The analysis is based on the content available in 37 large markets. Would the results of this study likely hold in smaller markets? Can the findings for television news be generalized to other sources of news, such as radio and newspapers?

187. Media Ownership Study 9 is a theoretical and experimental study of the impact of market structure on the incentives of media outlets to withhold information from citizens when withholding could benefit the policy position the media owner favors. In the past, many analyses of market structure and diversity have focused on the idea that, to ensure a wide range of viewpoints are provided, it is important to have multiple independent media outlets. The underlying presumption is that with many independent outlets it is likely that the decision makers for content transmission will have varying points of view and so varying points of view will be disseminated.

188. Media Ownership Study 9 emphasizes the importance for information transmission of having multiple outlets with the same viewpoint, with rivalry among outlets with similar viewpoints serving to prevent information withholding. The theoretical model is an abstraction, beginning with two outlets and a single policy issue on which they can have differing viewpoints and adding additional outlets. One conclusion is that ''competition within viewpoints dramatically enhances information revelation.'' In the real world, there are of course multiple issues and likely more than two alternative viewpoints per issue. Nevertheless, the analysis is valuable because it provides strong support for having at least four independent media voices, since every issue has at least two viewpoints and two outlets per viewpoint are needed in the model to ensure information regarding a viewpoint is not withheld. The experimental results are also suggestive, first because, broadly speaking, they confirm the theoretical predictions, but also because they indicate the market performance improves with additional media outlets, but that the marginal value (for information transmission) of additional outlets declines as the number of outlets increases. The Commission seeks comment on the validity of the theoretical model and the extent to which inferences based on it are relevant to the Commission's diversity analysis.

189. While Media Ownership Studies 5 and 8B focus on diversity measures relating to the content of the medium, Media Ownership Study 8A measures diversity of content by observing how consumers react to the content delivered to them. Can consumer behavior provide a reliable indicator of the level of diversity? The study utilizes variations in viewing patterns of local television news programs as compared to local viewing patterns for national television news programs to develop a measure of diversity of content on local news programs. The study compares the dispersion of the market shares of national news programs to the dispersion of the market shares of local news to benchmark the diversity offered by local news in a market. It finds little correlation between viewpoint diversity and local market ownership structure. The Commission seeks comment on these results.

190. Media Ownership Studies 1 and 5 measure the market share of local television news programs and news-formatted radio stations, respectively. Media Ownership Study 1 examines variations in viewing of local television news programming but finds little relationship to market structure. Can these metrics also provide information about the diversity of content provided by the media in addition to satisfaction with the media? Will diverse content necessarily attract a larger audience than less diverse content, or is the effect contingent on the diversity of the population within the market? The Commission seeks comment on whether these two studies can provide additional information on the level of diversity in a local market.

191. Measures of civic engagement also can be used to assess the level of viewpoint diversity in a market. For instance, if media outlets in a market supply programming with a diverse range of viewpoints, consumers may be

better informed, which can lead to increased local civic participation. As noted above, Media Ownership Study 3 provides data relevant to this analysis. It measures civic participation and knowledge. Does this metric also provide useful information about the level of viewpoint diversity in the market? Several measures examined by the study may have relevance to diversity depending on how consumers react to hearing diverse viewpoints. The study measures consumers' recognition of politicians. Is it reasonable to conclude that markets where consumers are more likely to recognize the positions held by various politicians are markets in which more diverse information is available? The Commission seeks comment on the relevance of civic participation for measuring the level of viewpoint diversity in the market.

4. Study Relating to Minority and Women Ownership Issues

192. Media Ownership Study 7 considers the relationship between ownership structure and the provision of radio programming targeted to African-American and Hispanic audiences. It provides mixed evidence on whether minority-owned radio stations better serve minority populations. This study looks at the provision of radio programming to minority (African-American and Hispanic) audiences, as reflected in the choices of radio stations to select formats that are popular with minority audiences. It reflects that minority audiences—specifically Black and Hispanic listeners—have very different listening preferences from the majority non-Hispanic, White population. For example, the study shows that a single programming format, Urban—attracts half of black listening, while it attracts less than five percent of nonblack listening. The data also suggest that there is a positive relationship between minority ownership of radio stations and the total amount of minority-targeted radio programming available in a market—in other words, that minority-owned stations are more likely to provide programming targeted to minorities than are non-minority owned stations. The data do not indicate a clear relationship between ownership concentration and the number of different radio formats in each market, although the cross-sectional analysis does suggest that ownership concentration promotes a greater number of formats in the market. The Commission seeks comment on this study and on the appropriate application of its analysis to the Commission's policy goals. Are there other statistical studies available that the Commission should consider, relating market structure and the promotion of content that is specifically of interest to minorities and women? Do such studies use statistical analysis of a reasonably large sample of markets? Are there individual market case studies available that are relevant and, if so, what role is there for such case studies in the Commission's deliberations?

F. Attribution Matters

193. The Commission's broadcast attribution rules define which financial or other interests in a licensee must be counted in applying the broadcast ownership rules. They seek to identify those interests in licensees that confer on their holders a degree of ''influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions.'' Although the Commission did not seek comment on attribution issues in the *NOI,* the Commission does so now in order to address issues raised in the record regarding the impact, both positive and negative, of certain agreements on the Commission's ownership rules and fundamental policy goals.

194. The Commission seeks comment in particular regarding local news service (LNS) agreements and shared service agreements (SSAs). An LNS agreement is defined by commenters as an agreement in which multiple local broadcast television stations contribute certain news staff and equipment to a joint news gathering effort coordinated by a single managing editor. According to commenters, an SSA is an agreement, or series of agreements, in which one in-market station provides operational support and programming for another in-market station. Public interest commenters contend that LNS agreements and SSAs result in fewer independent voices and less local news content and could be used to circumvent the Commission's rules. On the other hand, broadcasters assert that these agreements facilitate greater collaboration between media outlets and permit stations to sustain labor intensive journalism, thereby offering more communities access to local news content than could otherwise be achieved.

195. *Background.* The Commission's attribution rules currently make attributable certain local marketing agreements (LMAs), also referred to as time brokerage agreements (TBAs), in which a broker purchases discrete blocks of time from a licensee and supplies programming and sells advertising for the purchased time. Certain joint sales agreements (JSAs), which ''involve primarily the sale of advertising time and not decisions concerning programming,'' are also subject to attribution. These agreements are not precluded by any Commission rule or policy as long as the Commission's ownership rules are not violated and the participating licensees maintain ultimate control over their facilities.

196. The Commission first adopted attribution rules for same-market radio LMAs in 1992. The Commission was concerned that absent such rules significant time brokerage under such agreements, combined with increased common ownership permitted by revised local radio ownership rules, could undermine the Commission's competition and diversity goals. In 1999, the Commission adopted attribution rules for television LMAs, finding that the rationale for attributing same-market radio LMAs applied equally to same-market television LMAs, but declined to adopt attribution rules for radio or television JSAs. However, the Commission, in its *2002 Biennial Report and Order,* adopted attribution rules for same-market radio JSAs, finding that JSAs may convey sufficient influence and control over advertising to merit attribution. Subsequently, in 2004, the Commission initiated a rulemaking to determine whether or not to adopt attribution rules for television JSAs; the Commission tentatively concluded that it should. No decision has been issued in that proceeding.

197. *Potential Concerns.* CWA and Free Press object to LNS agreements because they believe that collaboration under LNS agreements harms competition and reduces the amount of independently produced local news programming available to consumers. These commenters are concerned that stations will be unable to devote sufficient resources to independent journalism as a result of the staff reductions and resource sharing resulting from the creation of an LNS. CWA also is concerned that consolidating newsgathering and editorial control reduces diversity and in-depth coverage of local news. Because stations are reporting the same story, CWA argues, viewers are exposed only to a single perspective on every story covered by the LNS. Moreover, CWA suggests that increased communication between stations could lead to antitrust law violations.

198. CWA and Free Press also object to SSAs, particularly those that allow a

single station to produce the news content for multiple stations in a local market. According to these commenters, such agreements result in ''re-run'' content being broadcast over multiple newscasts, thereby reducing the number of independent voices available in the local community. Furthermore, these commenters assert that the staff reductions that typically accompany SSAs reduce the quality, quantity, and diversity of local news coverage.

199. CWA and Free Press object to SSAs also because they believe broadcasters may be using them to circumvent the Commission's multiple ownership rules. CWA suggests that SSAs contain very similar provisions to LMAs and JSAs, which are attributable under certain conditions under the Commission's multiple ownership rules. For instance, like many LMAs and JSAs, SSAs may involve the sharing of facilities, advertising sales personnel, news production, and certain station operations, and options to purchase the brokered station. CWA opposes broadcasters using SSAs to outsource (or broker) newscasts, in asserted circumvention of the Commission's attribution rules. According to CWA, news programming accounts for an average of 45 percent of a station's revenue; therefore, a brokering station can unfairly acquire a significant portion of the economic benefit generated by the brokered station without triggering the attribution rules. In addition, the American Cable Association (ACA) argues that both SSAs and LMAs harm local competition particularly when they permit stations to jointly negotiate retransmission consent. ACA argues that such arrangements permit local broadcast stations to exercise additional leverage with respect to MVPDs leading to higher fees for signal carriage, which are passed on to consumers in the form of higher rates. ACA suggests that broadcasters should be precluded from including collective negotiation of retransmission consent in SSAs or LMAs, particularly with respect to the four top-rated local stations.

200. *Potential Benefits.* On the other hand, broadcasters assert that sharing arrangements (including LNS agreements, LMAs, SSAs, and JSAs) are beneficial to local media markets, generating local news and other services that would not be possible otherwise. Gray asserts that, because of the considerable cost savings associated with its sharing agreements, it can invest in the development of multicast programming streams, mobile video applications, and other uses of the broadcast spectrum. The Local TV Coalition and Nexstar note that the Commission has long held that sharing agreements (*e.g.,* JSAs) generate efficiencies and serve the public interest.

201. According to the Local TV Coalition and TTBG, sharing agreements can be particularly important in small and mid-sized markets. The Coalition asserts that the advertising revenue available in most small and mid-sized markets is insufficient to support four stand-alone broadcast television news operations. In such markets, the Coalition states, broadcasters budget an average of approximately $1.8 million per year for the capital and operating expenses associated with local news production. The Local TV Coalition notes that unprofitable news operations, like any unprofitable business venture, likely will be eliminated over time. The Local TV Coalition submits an analysis of 20 small and mid-sized markets, which it asserts shows that one or more news operations would have been lost without the existence of shared services agreements or common ownership of local stations.

202. In addition, the Local TV Coalition provides numerous examples of claimed public interest benefits from sharing agreements. For example, in the Burlington, Vermont–Plattsburgh, New York market, the local Fox affiliate and the local ABC affiliate entered into a JSA and a SSA in 2005. Prior to entering into these agreements, the Fox station had never aired a local newscast and the ABC station had discontinued its news operation and fired 25 staffers. Since concluding the sharing agreements, the Fox station now produces newscasts for both stations, resulting in 28 new jobs. NAB also submits examples of broadcast television stations that increased local news programming as a result of sharing agreements. Nexstar states that sharing agreements have enabled it to increase news coverage in the Lubbock, Texas and the Peoria-Bloomington, Illinois markets, and as a result it has launched a nightly newscast in various markets across five states that previously had no local news coverage. Nexstar asserts that any layoffs associated with these agreements typically involve back-office staff and not news personnel. It also asserts that any layoffs of redundant news personnel permit local broadcasters to invest more money in news production and other local programming. Broadcasters state that issues concerning the joint negotiation of retransmission consent fees should be addressed in the Commission's retransmission consent proceeding, and not in the media ownership proceeding. Ultimately, broadcasters oppose any additional regulation of sharing agreements.

203. *Request for Comment.* Are LNS agreements and SSAs substantively equivalent to agreements that are already subject to the attribution rules, and are they therefore attributable today or should they be attributable? What characteristics make them different from already attributable agreements? How, if at all, do LNS agreements and SSAs create interests in licensees that confer a degree of ''influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions''? What is the impact of agreements such as LNS agreements and SSAs on the Commission's competition, localism, and diversity goals? Does either of these types of agreements have a greater impact on the Commission's policy goals than the other? If so, what characteristics account for the disparity in impact? Should the Commission, and if so how, consider the impact of these agreements on the Commission's policy goals when formulating the ownership rules?

204. If the Commission determines that LNS agreements and/or SSAs should be attributable, how should the Commission define LNS agreements and SSAs and what attribution standard should the Commission adopt? If the Commission adopts new attribution rules, should existing agreements be grandfathered? If so, how should the grandfathering be structured? If not, how long should broadcasters have to comply with the new attribution rules? If the Commission determines that these arrangements should not be attributable, should the Commission adopt disclosure requirements? If so, what disclosure should be required? Such disclosures could help viewers determine the origin of news content and help the Commission monitor the proliferation of such agreements and determine whether to revisit the issue of attribution.

205. What benefits accrue from stations entering into LNS agreements or SSAs? What would be the impact of a rule that would lead to the attribution of LNS agreements or SSAs? If these agreements result in attribution, what would be the effect, if any, on the cost to produce local news, the ability to employ journalists, and the overall quality of news programming? Is it possible that, without such agreements, local news coverage could be reduced or that some stations will cease news production?

206. Instead of focusing on attributing certain named agreements (*e.g.,* JSAs,

LMAs, SSAs, LNS agreements) as the Commission has in the past, should the Commission adopt a broader regulatory scheme that encompasses all agreements, however styled, that relate to the programming and/or operation of broadcast stations? If so, how should the Commission define the covered agreements and structure this regulatory scheme? What characteristics of such agreements are most likely to confer a degree of ''influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions''? Should the Commission consider the impact of these agreements on other matters of Commission interest, such as retransmission consent negotiations? Or are these issues more appropriately considered in another context, such as the retransmission proceeding?

207. The Commission strongly encourages parties to existing agreements of all of these types to respond to this request for comment and to provide any other information they think is relevant. It is critical that the Commission obtain accurate information on how these agreements operate in order to make a reasoned decision on what, if any, changes should be made to the Commission's attribution rules.

II. Procedural Matters

A. Filing Requirements

208. *Ex Parte Rules.* The proceeding this *Notice of Propose Rulemaking* initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

209. *Comment Information.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet email. To get filing instructions, filers should send an email to *ecfs@fcc.gov,* and include the following words in the body of the message ''get form.'' A Sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.
- People with Disabilities: Contact the FCC to request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an emailto *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), (202) 418–0432 (TTY).

B. Initial Regulatory Flexibility Analysis

210. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in this *Notice of Proposed Rulemaking.* The Commission will send a copy of this *Notice of Proposed Rulemaking,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

211. Pursuant to a statutory mandate under the Telecommunications Act of 1996, the *Notice of Proposed Rulemaking* seeks comment on the Commission's media ownership rules and proposed changes thereto. As discussed in the *Notice of Proposed*

Rulemaking, the Commission is required by statute to review its media ownership rules every four years to determine whether they ''are necessary in the public interest as the result of competition.'' The *Notice of Proposed Rulemaking* discusses the local television ownership rule, the local radio ownership rule, the newspaper/broadcast cross-ownership rule, the radio/television cross-ownership rule, and the dual network rule. A challenge in this proceeding is to take account of new technologies and changing marketplace conditions while ensuring that the media ownership rules continue to serve the Commission's public interest goals of competition, localism, and diversity. The *Notice of Proposed Rulemaking* also seeks comment on economic studies analyzing the relationship between local media market structure and the policy goals that underlie the Commission's media ownership rules. In addition, the *Notice of Proposed Rulemaking* seeks comment in this proceeding on the aspects of the Commission's 2008 *Diversity Order* that the Third Circuit remanded in *Prometheus II.*

212. The Commission finds that the public interest is best served by modest, incremental changes to the rules. Recognizing current market realities, the *Notice of Proposed Rulemaking* seeks comment on the following proposals:

• *Local Television Ownership Rule.* In the *Notice of Proposed Rulemaking,* the Commission tentatively concludes that it should retain the current local television ownership rule with minor modifications. Specifically, the *Notice of Proposed Rulemaking* proposes to eliminate the Grade B contour overlap provision of the current rule. The Commission tentatively concludes that it should retain the prohibition against mergers among the top-four-rated stations, the eight-voices test, and the existing numerical limits. In addition, the *Notice of Proposed Rulemaking* seeks comment on whether to adopt a waiver standard applicable to small markets, as well as appropriate criteria for any such standard. Also, the *Notice of Proposed Rulemaking* seeks comment on whether multicasting should be a factor in determining the television ownership limits.

• *Local Radio Ownership Rule.* The *Notice of Proposed Rulemaking* proposes to retain the current local radio ownership rule. The *Notice of Proposed Rulemaking* also seeks comment on alternative modifications to the rule and whether and how the rule should account for other audio platforms. The *Notice of Proposed Rulemaking* also proposes to retain the AM/FM subcaps, and seeks comment on the impact of digital radio. The *Notice of Proposed Rulemaking* seeks comment on whether to adopt a waiver standard and on specific criteria to adopt.

• *Newspaper/Broadcast Cross-Ownership Rule.* In the *Notice of Proposed Rulemaking,* the Commission tentatively concludes that some newspaper/broadcast cross-ownership restrictions continue to be necessary to protect and promote viewpoint diversity. The *Notice of Proposed Rulemaking* proposes to use Nielsen DMA definitions to determine the relevant market area for television stations, given the lack of a digital equivalent to the analog Grade A service contour. The *Notice of Proposed Rulemaking* proposes to adopt a rule that includes elements of the 2006 rule, including the top 20 DMA demarcation point, the top-four television station restriction, and the eight remaining voices test.

• *Radio/Television Cross-Ownership Rule.* The *Notice of Proposed Rulemaking* proposes to eliminate the radio/television cross-ownership rule in favor of reliance on the local radio rule and local television rule. The Commission believes that the local radio and television ownership rules adequately protect the Commission's localism and diversity goals and tentatively conclude that eliminating this rule is not likely to lead to significant additional consolidation of broadcast facilities. The *Notice of Proposed Rulemaking* seeks comment on this.

• *Dual Network Rule.* In the *Notice of Proposed Rulemaking,* the Commission tentatively concludes that the dual network rule remains necessary in the public interest to promote competition and localism and should be retained without modification.

• *Diversity Order Remand/Eligible Entity Definition.* The Commission seeks comment in this *Notice of Proposed Rulemaking* on issues that previously were being addressed in a separate rulemaking proceeding focused on enhancing the diversity of ownership in the broadcast industry, including by increasing ownership opportunities for minorities and women. As explained in the *Notice of Proposed Rulemaking,* the Third Circuit in *Prometheus II* remanded the measures adopted in the Commission's 2008 *Diversity Order* that relied on a revenue-based ''eligible entity'' standard and emphasized that the actions required on remand from the *Diversity Order* should be completed ''within the course of the Commission's 2010 Quadrennial Review of its media ownership rules.'' Accordingly, the Commission seeks comment in this proceeding on how the Commission should respond to the court's remand and on other actions the Commission should consider to increase the level of broadcast station ownership by minorities and women.

2. Legal Basis

213. The proposed action is authorized under sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and section 202(h) of the Telecommunications Act of 1996.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

214. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

215. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than $14.0 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' The Commission has estimated the number of licensed commercial television stations to be 1,382. According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of October 3, 2011, 950 (or about 73 percent) of an estimated 1,301 commercial television stations in the United States have revenues of $14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 392. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be

affected by the Commission's action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

216. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the Commission's estimates of small businesses to which they apply may be over-inclusive to this extent.

217. *Radio Broadcasting.* The proposed policies could apply to radio broadcast licensees, and potential licensees of radio service. The SBA defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts. Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public. According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database on as of October 3, 2011, about 10,783 (97 percent) of 11,125 commercial radio stations have revenues of $7 million or less and thus qualify as small entities under the SBA definition. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by the Commission's action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

218. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the Commission's estimates of small businesses to which they apply may be over-inclusive to this extent.

219. *Daily Newspapers.* The SBA has developed a small business size standard for the census category of Newspaper Publishers; that size standard is 500 or fewer employees. Census Bureau data for 2007 show that there were 4,852 firms in this category that operated for the entire year. Of this total, 4,771 firms had employment of 499 or fewer employees, and an additional 33 firms had employment of 500 to 999 employees. Therefore, the Commission estimates that the majority of Newspaper Publishers are small entities that might be affected by the Commission's action.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

220. The *Notice of Proposed Rulemaking* proposes a number of rule changes that will affect reporting, recordkeeping and other compliance requirements. Each of these changes is described below.

221. The *Notice of Proposed Rulemaking* proposes modifications to several of the media ownership rules as set forth above. The proposals, if ultimately adopted, would modify several FCC forms and their instructions: (1) FCC Form 301, Application for Construction Permit For Commercial Broadcast Station; (2) FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License; and (3) FCC Form 315, Application for Consent to Transfer Control of Corporation Holding Broadcast Station Construction Permit or License. The Commission may have to modify other forms that include in their instructions the media ownership rules or citations to media ownership proceedings, including Form 303–s and Form 323. The impact of these changes will be the same on all entities, and the Commission does not anticipate that compliance will require the expenditure of any additional resources.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

222. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

223. The specific proposals on which the *Notice of Proposed Rulemaking* seeks comment, set forth above, are intended to achieve the Commission's public interest goals of competition, localism, and diversity. The *Notice of Proposed Rulemaking* seeks comment on a number of measures designed to minimize the economic impact of the Commission's proposed rules on firms generally, as well as those intended to promote broadcast ownership opportunities among a diverse group of owners, including small entities. For example, as part of the local radio ownership rule, the *Notice of Proposed Rulemaking* proposes to retain the AM/FM subcaps, which limit the number of radio stations in the same service that an entity can own. As noted in the *Notice of Proposed Rulemaking,* the Commission has previously concluded that AM/FM subcaps serve the public interest by promoting new entry into radio ownership, particularly by small businesses, including minority- and women-owned businesses.

224. The *Notice of Proposed Rulemaking* also seeks comment in this proceeding on the aspects of the Commission's 2008 *Diversity Order* that the Third Circuit remanded in *Prometheus II.* Among other measures, the *Notice of Proposed Rulemaking* seeks comment on those intended to promote broadcast ownership opportunities for small businesses. For instance, the *Notice of Proposed Rulemaking* seeks comment regarding whether to reinstate the preexisting revenue-based eligible entity definition, which the Commission has concluded would ''be effective in creating new opportunities for broadcast ownership by a variety of small businesses and new entrants, including minorities and women.'' The *Notice of Proposed Rulemaking* also seeks comment on

whether increasing station ownership by small businesses should be an independent policy goal in this proceeding and, if so, whether readopting the preexisting eligible entity definition would be a reasonable and effective means of promoting this objective.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

225. None.

C. Ordering Clauses

226. Accordingly, *It Is Ordered,* that pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and section 202(h) of the Telecommunications Act of 1996, this *Notice of Proposed Rulemaking Is Adopted.*

227. *It Is Further Ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

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

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

2. Amend § 73.3555 by removing and reserving paragraph (c) and revising paragraphs (b) and (d) to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

(b) Local television multiple ownership rule. An entity may directly or indirectly own, operate, or control two television stations licensed in the same Designated Market Area (DMA) (as determined by Nielsen Media Research or any successor entity) if:

(1) At the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top four stations in the DMA, based on the most recent all-day (9 a.m.–midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service; and

(2) At least 8 independently owned and operating, full-power commercial and noncommercial TV stations would remain post-merger in the DMA in which the communities of license of the TV stations in question are located. Count only those TV stations with a community of license in the same DMA as the stations in the proposed combination. In areas where there is no Nielsen DMA, count the TV stations present in an area that would be the functional equivalent of a TV market. Count only those TV stations with a community of license in the same area that would be the functional equivalent of a TV market as the stations in the proposed combination.

(c) [Reserved]

(d) Daily newspaper-broadcast cross-ownership rule. (1) No license for a full power AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in:

(i) The TV station's community of license and the entire community in which the newspaper is published being located within the same Nielsen DMA;

(ii) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with §§ 73.183 or 73.186, encompassing the entire community in which such newspaper is published; or

(iii) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313, encompassing the entire community in which such newspaper is published.

(2) There is a presumption that it is consistent with the public interest, convenience, and necessity for an entity to own, operate or control in a top 20 Nielsen DMA a daily newspaper and

(i) A full power radio station, or

(ii) A full-power TV broadcast station provided that,

(A) The TV station is not ranked among the top four TV stations in the DMA, based on the most recent all-day (9 a.m.–midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service; and

(B) At least 8 independently owned and operating major media voices would remain in the DMA in which the community of license of the TV station in question is located (for purposes of this provision major media voices include full-power TV broadcast stations and major newspapers).

(4) There is a presumption that it is inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control in a DMA other than the top 20 Nielsen DMAs a daily newspaper and a full-power TV broadcast station in the same DMA as the newspaper's community of publication, or a commercial AM or FM broadcast station as defined in paragraph (d)(1) of this section.

* * * * *

[FR Doc. 2012–148 Filed 1–18–12; 8:45 am]

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H.R. 1540/P.L. 112–81

National Defense Authorization Act for Fiscal Year 2012 (Dec. 31, 2011; 125 Stat. 1298)

H.R. 515/P.L. 112–82

Belarus Democracy and Human Rights Act of 2011 (Jan. 3, 2012; 125 Stat. 1863)

H.R. 789/P.L. 112–83

To designate the facility of the United States Postal Service located at 20 Main Street in Little Ferry, New Jersey, as the "Sergeant Matthew J. Fenton Post Office". (Jan. 3, 2012; 125 Stat. 1869)

H.R. 1059/P.L. 112–84

To protect the safety of judges by extending the authority of the Judicial Conference to redact sensitive information contained in their financial disclosure reports, and for other purposes. (Jan. 3, 2012; 125 Stat. 1870)

H.R. 1264/P.L. 112–85

To designate the property between the United States Federal Courthouse and the Ed Jones Building located at 109 South Highland Avenue in Jackson, Tennessee, as the "M.D. Anderson Plaza" and to authorize the placement of a historical/identification marker on the grounds recognizing the achievements and philanthropy of M.S. Anderson. (Jan. 3, 2012; 125 Stat. 1871)

H.R. 1801/P.L. 112–86

Risk-Based Security Screening for Members of the Armed Forces Act (Jan. 3, 2012; 125 Stat. 1874)

H.R. 1892/P.L. 112–87

Intelligence Authorization Act for Fiscal Year 2012 (Jan. 3, 2012; 125 Stat. 1876)

H.R. 2056/P.L. 112–88

To instruct the Inspector General of the Federal Deposit Insurance Corporation to study the impact of insured depository institution failures, and for other purposes. (Jan. 3, 2012; 125 Stat. 1899)

H.R. 2422/P.L. 112–89

To designate the facility of the United States Postal Service located at 45 Bay Street, Suite 2, in Staten Island, New York, as the "Sergeant Angel Mendez Post Office". (Jan. 3, 2012; 125 Stat. 1903)

H.R. 2845/P.L. 112–90

Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Jan. 3, 2012; 125 Stat. 1904)

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